United States Court of Appeals

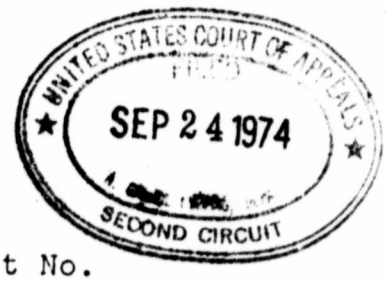
for the Second Circuit

APPENDIX

74-1611

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT



REA EXPRESS, INC.

Petitioner,

v.

CIVIL AERONAUTICS BOARD

Respondent.

Docket No.

74-1611

B/P/S

JOINT APPENDIX - VOLUME III

Arthur M. Wisehart, Esq.
219 East 42nd Street
New York, New York 10017

Glen M. Bendixsen, Esq.
Civil Aeronautics Board
1825 Connecticut Avenue, N. W.
Washington, D. C. 20428

Russell S. Bernhard, Esq.
Macleay, Lynch, Bernhard & Gregg
1625 K Street, N. W.
Washington, D. C. 20006

William C. Burt, Esq.
Koteen & Burt
1000 Vermont Avenue, N. W.
Washington, D. C. 20005

Louis P. Haffer, Esq.
Haffer & Meiser
1730 Rhode Island Avenue, N. W.
Washington, D. C.

Charles A. Washer, Esq.
American Retail Federation
1616 H Street, N. W.
Washington, D. C. 20006

William Q. Keenan, Esq.
277 Park Avenue
New York, New York 10017

Eugene Wallman, Esq.
55 Liberty Street
New York, New York 10005

Marshall Meyers, Esq.
Meyers, Marshall & Meyers
1133 Fifteenth Street, N. W.
Washington, D. C. 20005

Paul G. Reilly, Jr., Esq.
1414 Avenue of the Americas
New York, New York 10019

Jerry W. Ryan, Esq.
Reavis, Pogue, Neal & Rose
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036

Carl D. Lawson, Esq.
Antitrust Division
Department of Justice
Washington, D. C. 20530

September 25, 1974

INDEX

VOLUME I

	Page
Docket Entries, Docket 22387	1(a)
Docket Entries, Docket 22388	13(a)
Docket Entries, Docket 26238	25(a)
Letter to Civil Aeronautics Board dated October 22, 1969	27(a)
Petition and Complaint	39(a)
Answer on Behalf of Airline Parties to Agreement, etc.	43(a)
Letter to Civil Aeronautics Board dated May 21, 1970.	101(a)
Amendment to Air Express Agreement	103(a)
Letter to Civil Aeronautics Board dated June 30, 1970	110(a)
Petition and Protest	115(a)
Complaint of Air Freight Forwarders, etc.	121(a)
Reply by REA Express, Inc. and Participating Airlines, ets.	153(a)
Order 70-7-109	174(a)
Order 70-7-110	181(a)
Petition for Reconsideration	186(a)
Letter dated August 4, 1970	212(a)
Motion for Waiver of Board's Rules	213(a)
Reply on Behalf of Airlines, etc. to Petion for Reconsideration	216(a)

Page

Answer of Air Freight Forwarders Association to Petition for Reconsideration ..... 222(a)
Answer to Petition for Reconsideration ..... 234(a)
Answer of Dept of Transportation in Support of Petition for Reconsideration ..... 240(a)
Withdrawal, in Part of Protest ..... 243(a)
Motion of AFFA to Strike "Answer" of DOT ..... 244(a)
Order 70-8-48 ..... 248(a)
Order 70-9-98 ..... 254(a)
Order 70-9-134 ..... 262(a)
Order 70-12-44 ..... 265(a)
Order 70-12-126 ..... 275(a)
Notice Dated January 18, 1971 ..... 277(a)
Motion of the Civil Aeronautics Board to Dismiss REA's Petition for Review ..... 279(a)
Order Dismissing Petition for Review for Mootness... 289(a)
Motion of REA Express to Include Priority Study .... 290(a)
Appendix G to Brief of Participating Airlines to Administrative Law Judge Shapiro ..... 293(a)
Appendix to Brief of Bureau of Economics to Administrative Law Judge Shapiro ..... 310(a)
Excerpts from Brief of Participating Airlines to Administrative Law Judge Keith ..... 311(a)

Page

Excerpts from Brief of AFFA to Administrative Law Judge Keith ..... 314(a)

Motion to Include United Airlines Information Response in Docket 23080 in the Record ..... 325(a)

Notice Dated October 13, 1971 ..... 331(a)

VOLUME II

Motion of REA Express to Include Air Express Committee Report in the Record ..... 333(a)

Notice Dated November 2, 1971 ..... 382(a)

Motion of REA Express to Include Excerpts from Express Service Investigation Transcript in the Record ..... 383(a)

Notice Dated January 3, 1972 ..... 391(a)

Initial Decision of Examiner Milton H. Shapiro ..... 392(a)

Initial Decision of Examiner James S. Keith ..... 566(a)

Motion for Consolidation ..... 637(a)

Order 72-6-27 ..... 643(a)

Exceptions of REA Express to the Initial Decision in Docket 22388 ..... 644(a)

Order 72-7-15 ..... 647(a)

Excerpts from Brief of REA to Board in Air Express Rates Case ..... 652(a)

Page

Order 73-12-36 ..... 663(a)

VOLUME III

Petition of REA Express, Inc. for Reconsideration .. 707(a)

Motion for Leave to File Document and Motion to Consolidate ..... 734(a)

Order 74-2-118 ..... 744(a)

Motion for Leave to File Document and for Extension ..... 750(a)

Concurrence of Airline in Motion of REA Express, Inc. for Extension ..... 755(a)

Concurrence of National Small Shipments Traffic Conference in Motion of REA Express, Inc. for Extension ..... 758(a)

Order 74-4-1 ..... 763(a)

Order 74-5-23 ..... 774(a)

Order 74-5-24 ..... 783(a)

Order 74-5-25 ..... 786(a)

Petition for Review ..... 806(a)

Order 74-5-74 ..... 813(a)

Statement of Position of Bureau of Economics in Domestic Air Freight Rate Investigation ..... 815(a)

Motion of REA Express, Inc. for Stay ..... 832(a)

Page

Amended Petition for Review ..... 865(a)

Stipulation ..... 872(a)

Order 74-6-117 ..... 873(a)

Order 74-6-135 ..... 876(a)

Order 74-6-136 ..... 879(a)

Petition of REA Express, Inc. to Reject Tariffs. ... 882(a)

Complaint of REA Express, Inc. against United Air Lines, Inc. ..... 885(a)

VOLUME IV

Exhibits

Express Service Investigation

AAB-100 ..... 912(a)

AAB-200-328 ..... 923(a)

AAB-600-603 ..... 1055(a)

AFFA-IR-1A-1G ..... 1200(a)

AFFA-IR-7 ..... 1222(a)

AFFA-IR-9A-9G ..... 1223(a)

AFFA-IR-16 ..... 1230(a)

AFFA-101 ..... 1238(a)

AFFA-123-129 ..... 1239(a)

AFFA-312 ..... 1246(a)

AFFA-403 ..... 1247(a)

AFFA-408 ..... 1253(a)

Page

AFFA-700 ..... 1254(a)

AFFA-900 ..... 1256(a)

AFFA-R-1-2 ..... 1258(a)

AFFA-R-4-5 ..... 1260(a)

AFFA-R-9-11 ..... 1262(a)

AFFA-R-13 ..... 1265(a)

AFFA-R-15 ..... 1266(a)

AFFA-R-20-21 ..... 1267(a)

AFFA-R-T-1-2 ..... 1269(a)

AFFA-SR-1 ..... 1284(a)

VOLUME V

DAX-IR-1 ..... 1286(a)

EAF-1 ..... 1291(a)

EAF-17 ..... 1295(a)

EAF-21 ..... 1299(a)

EAF-R-26 ..... 1301(a)

EAF-R-T-4-7 ..... 1333(a)

EX-1 ..... 1352(a)

NED-203 ..... 1357(a)

NED-403 ..... 1358(a)

NED-410 ..... 1359(a)

NITL-DE-1-2 ..... 1360(a)

Page

PA-IR-801-803 ..... 1376(a)
PA-121 ..... 1506(a)
PA-304 ..... 1508(a)
PA-314 ..... 1531(a)
PA-402 ..... 1534(a)
PA-406-407 ..... 1535(a)
PA-423 ..... 1538(a)
PA-T-3 ..... 1540(a)
PA-T-5 ..... 1543(a)
PA-R-101 ..... 1549(a)
REA-201-202 ..... 1550(a)
REA-204-205 ..... 1566(a)
REA-212 ..... 1569(a)
REA-319 ..... 1570(a)
REA-326 ..... 1571(a)
REA-331 ..... 1591(a)
REA-335 ..... 1598(a)
REA-349-352 ..... 1600(a)
REA-354 ..... 1610(a)

VOLUME VI

REA-401 ..... 1645(a)
REA-T-2 ..... 1682(a)

Page

REA-T-8-9 ..... 1683(a)

REA-R-1215 ..... 1686(a)

WW-IR-II 1 ..... 1690(a)

Investigation of Air Express Rates

PC-300-314 ..... 1694(a)

REA-IR-23K ..... 1729(a)

REA-1000-1001 ..... 1737(a)

REA-REB-2100 ..... 1755(a)

Domestic Air Freight Rate Investigation

REA-R-T-1 ..... 1759(a)

Transcript

Express Service Case Hearing

Testimony of Mr. De Voursney, Participating Airlines ..... 1701(a)

Testimony of Mr. Campbell, Participating Airlines ..... 1783(a)

Testimony of Mr. Eichner, Participating Airlines ..... 1785(a)

Testimony of Mr. Dravis, REA ..... 1821(a)

Testimony of Mr. Kole, REA ..... 1837(a)

VOLUME VII

	Page
Testimony of Mr. Miltenis, REA	1845(a)
Testimony of Mr. Magee, REA	1857(a)
Testimony of Mr. Ward, REA	1865(a)
Testimony of Mr. Pazzi, REA	1869(a)
Testimony of Mr. Moore, REA	1870(a)
Testimony of Mr. Benson, REA	1872(a)
Testimony of Mr. Scott, REA	1873(a)
Testimony of Mr. Weber, REA	1876(a)
Testimony of Mr. Cole, REA	1877(a)
Testimony of Mr. Maixner, REA	1879(a)
Testimony of Mr. McNulty, Emery	1880(a)
Testimony of Mr. Williams	1881(a)
Testimony of Mr. Wilson, Shipper Leagues	1891(a)
Testimony of Mr. Morse, Shipper Leagues	1918(a)
Testimony of Mr. Heine, Shipper Leagues	1920(a)
Testimony of Mr. Green, Shipper Leagues	1926(a)
Testimony of Mr. Stewart, Shipper Leagues	1933(a)
Testimony of Mr. Leslie, Shipper Leagues	1939(a)
Testimony of Mr. Joy, Shipper Leagues	1940(a)
Testimony of Mr. Benoit, Shipper Leagues	1950(a)
Testimony of Mr. Belser, Trans-Air	1952(a)
Testimony of Mr. Byrne, REA	1955(a)
Testimony of Mr. Dean, REA	1957(a)

Page

Testimony of Mr. Byrne, REA (continued) ..... 1960(a)
Testimony of Mr. Kerrigan, REA ..... 1964(a)
Testimony of Mr. Ryan, AFFA ..... 1974(a)
Testimony of Mr. Shulman, AFFA ..... 1980(a)
Testimony of Mr. Dworshak, AFFA ..... 1981(a)
Testimony of Mr. Hecteman, AFFA ..... 1984(a)
Testimony of Mr. French, Emery ..... 1985(a)
Testimony of Mr. Ermer, AFFA ..... 1986(a)
Testimony of Mr. Currier, AFFA ..... 1990(a)
Testimony of Mr. King, Emery ..... 1999(a)
Testimony of Mr. Stern, Bor-Air ..... 2007(a)
Testimony of Mr. Wrin, Southern Pacific ..... 2018(a)

Express Service Investigation Oral Argument

Argument of Mr. Mathews, REA ..... 2021(a)
Argument of Mr. Bernhard, Participating Airlines ..... 2031(a)
Argument of Mr. Haffer, AFFA ..... 2046(a)
Argument of Mr. Ryan, Emery ..... 2051(a)
Argument of Mr. Blum, BOR ..... 2054(a)
Reguttal Argument of Mr. Bernhard, Participating Airlines ..... 2055(a)
Investigation of Air Express Rate Hearing ..... 2056(a)

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

EXPRESS SERVICE INVESTIGATION	:	Docket 22388

PETITION OF REA EXPRESS, INC.
FOR RECONSIDERATION

REA Express, Inc. ("REA") hereby petitions the Board to reconsider its Opinion and Order entered herein on December 7, 1973 (Order 73-12-36) to the extent stated below.

The Board correctly determined that REA should be authorized to operate as an air freight forwarder. REA has been seeking such rights for many years. It welcomes the opportunity to participate in the air freight business and to contribute its resources and experience to the development of that industry. It is working on plans to begin such service.

At the same time, however, REA urges most vigorously that the "transitional" period specified by Order 73-12-36, during which REA is to make the preparations necessary to conduct its new forwarding operations, is inadequate in both scope and duration.*/ The shippers should not be immediately deprived of Air Express when REA commences forwarding operations, but should be permitted a true transitional period, during which the two operations coexist, to achieve an orderly adjustment. Further, a period of dual operations is needed to insure that REA will have the necessary financial strength to make the numerous changes in equipment, facilities and operating procedures required for conversion to air freight forwarding.

REA's situation in converting a $100 million Air Express operation to air freight forwarding is unique and different from a business just starting up. A starting business adds as it grows. On the other hand, the conversion of a large existing business to something different entails two penalties: (1) a substantial drop in revenues, compounded by (2) the continuing fixed costs of factors such as equipment,

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*/ REA adheres to its view that it should achieve air freight forwarding authority in addition to independent authority as the indirect carrier for Air Express and the modifications in the Air Express arrangement which are needed to make it a viable and effective service. In REA's opinion, the Board erroneously reversed the factual findings of Judge Keith that REA performs a unique Air Express service which the public interest requires be continued. This petition for reconsideration is limited to practical considerations flowing from the Board's determination relating to a transition from Air Express to air freight forwarding, without rearguing the positions previously taken by REA or waiving its position that the Board's departure from the findings of the Administrative Law Judge was arbitrary, capricious and not supported by substantial evidence.

facilities, and leases which are either in excess of the needs of the new business or not adaptable to it.

In addition, the shippers, the airlines, the forwarders, and REA itself, require a substantially longer period than the Board contemplates in order to make the numerous and complicated adjustments required by the termination of Air Express--a service which shippers have relied upon for over 46 years. Equally important, the Board cannot know whether the new priority service which it directs the airlines to institute will provide an adequate replacement for Air Express until the airlines have submitted detailed plans for operating and pricing such a service and interested parties have been afforded opportunity to comment. Nor can the Board know whether the forwarders will adequately carry the commodities now carried by Air Express, and serve the points now served by it, until they file tariffs demonstrating their competence to do so. Finally, assumptions basic to the Board's findings in the Express Service Case depend on the outcome of the Rates Case, Docket 22387, and a period of dual operation will make it possible for the findings on the separate records in both cases to be available before irrevocable action is taken.

For these reasons, REA believes that the transitional phase should extend until at least (i) six months after the airlines' and the forwarders' proposals have been finally approved by the Board and final decision has issued in the Rates case, or (ii) eighteen months after final decision in this Docket 22388, whichever is longer. REA believes that its proposal is

reasonable for all parties concerned and is in any event required to carry out the objectives of Order 73-12-36 without substantial injury to the public interest.

I. A Transitional Period in Which REA Has Dual Authority Should Be Provided

The Board's present Order provides that, even if REA does not commence air freight forwarding at an earlier date, Air Express will terminate 180 days after the effective date of the Order--i.e., on June 5, 1974. This is insufficient to accomplish an orderly transition for reasons set forth more fully in Part II of this Petition.

1. The Board's decision to terminate Air Express on or before June 5, 1974 is premised on the assumption that the airlines and forwarders will by then have been able to implement a priority service covering all commodities and all communities. There is no basis for this assumption. The transition from Air Express will be a difficult one for shippers, forwarders, airlines and REA, as will be described in more detail in Part II of this Petition. The transitional period therefore should (a) be of greater length, and (b) provide for a period of dual operation by REA.

In requesting authority to engage in inter-carrier discussions looking toward the establishment of a new priority service (Docket 26238), the airlines stress that "numerous problems must be solved" and that they will "require considerable lead time to establish such a service even if all the operational problems can be effectively resolved." (Emphasis

added.) While the airlines have sought to exclude shippers from their discussions, REA is certain that shippers, including forwarders, will wish to comment on the proposal developed by the airlines.*/ For this purpose, REA specifically requests the Board to direct the airlines to submit detailed plans for a priority service not later than March 1, 1974 and to allow shippers and forwarders, including REA, and the Board's Consumer Affairs Division, to comment on this proposal. In addition, REA requests that all forwarders file plans to provide priority service to all communities and for all commodities--i.e., service of comparable scope to Air Express--within 30 days after the airlines' plans are approved by the Board. Only when all such tariffs are filed will the shippers be able to comment intelligently and the Board be able adequately to determine the reasonableness of the charges which are proposed for the services that will supposedly replace Air Express. The Board's attempt to give the public a lesser service at what the Board assumes will be a higher rate (p.4) without determining what that rate will be, or its reasonableness, cannot be sustained. See Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade, 412 U.S. 800, 817 (1973), in which the Court made a comment appropriate to this aspect of the case:

> "Even giving the Commission's opinion the most sympathetic reading we find possible, we cannot discover in it an expressed reason for

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*/ Simultaneously herewith REA is filing a motion in Docket 26238 for the purpose inter alia of consolidating the airlines' petition into Docket 22388.

> permitting the railroads to reduce their services without showing that the rates they propose to maintain are reasonable rates for the service they intend to provide."

The importance of such a procedure is underscored by the shippers' testimony in this case, indicating that the present arrangements by the airlines and forwarders are not adequate to satisfy their needs. (See Part II, infra.) REA's Air Express handles approximately 6-1/2 million shipments per year and has revenues of over $100 million. With 6-1/2 million decisions made each year by shippers to utilize Air Express, it stands to reason that Air Express must offer something that the other existing services do not. Air Express is a going concern. Its volume in October 1973 was 4.7% higher than in October 1972. Once it is terminated, and the facilities, experience, etc., which it embodies are dedicated to other uses, it will be beyond resuscitation. Thus the plans for supplanting this widely used service, which pioneered the entire air cargo industry and has been in existence nearly 50 years, should be made specific and an opportunity for public comment afforded before the point of no return is passed.

2. The transitional period REA requests is more consistent with the period which REA and the airlines have themselves sought to provide. In their amendment to the Air Express Agreement dated December 15, 1972, the airlines and REA extended the Agreement until six months after the decision of the Board either in this proceeding or in Docket 22387 (the Air Express Rates case) becomes final--

i.e., after all administrative and judicial appeals are concluded.*/ Thus the airlines have accepted the necessity of a longer transitional period than Order 73-12-36 would allow.

3. The dual authority REA seeks is supported by the Bureau of Operating Rights. In its brief to the Board, the Bureau proposed that REA be authorized to operate both Air Express and air freight forwarding during the transitional period.**/

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*/ Footnote 48 at p. 40 of Order 73-12-36 incorrectly states that the amended Air Express Agreement expires 60 days after the final decision in Dockets 22387 and 22388. Perhaps the Board had in mind the amendment to the Agreement filed on October 7, 1970. This amendment was superseded by the later amendment of December 15, 1972, filed with the Board on December 19, 1972. The operative revision provides that the agreement will terminate six months after the final decision, including appeals therefrom, or such earlier time as the Board shall determine. The provision for earlier termination, of course, merely represents a recognition of the Board's power to approve or disapprove any agreement between REA and the airlines. It does not alter the desire of the parties that the Agreement continue for six months after the final decision in Dockets 22387 and 22388. The airlines in the past had opposed dual operation of Air Express and air freight forwarding by REA. However, there is nothing in the Air Express Agreement, as thus extended, which precludes such operation. Further, the airlines, although partners to that Agreement, themselves have had operations embracing both Air Express and air freight, and recently have instituted their own on-line premium service. Thus the airlines have not only dual but triple cargo operations.

**/ REA does not, of course, agree with BOR's view that a six-month transitional period is sufficient. The Board's choice of a six-month period, with conversion to air freight forwarding on a date certain, may have been based upon the Bureau's erroneous interpretation of the record. The Bureau's proposal of six months was purportedly based on the testimony of REA witness Daniel Kerrigan. In fact, however, the Bureau misconstrued Mr. Kerrigan's testimony. That testimony was a discussion of a forecast on the assumption that REA would retain Air Express indefinitely and would receive freight forwarding authority. It did not reflect any loss of Air Express business, and had therefore nothing to do with the need for, or length of, a transitional period. (Tr. 2124).

4. Such dual operations for REA also would be consistent with the fact that the Air Express Rates case has not yet been decided. The decision in the Express Service case assumes that the current Air Express arrangement cannot continue, and that granting REA rate freedom or dual authority would create great difficulties. However, both of these assumptions are in error because they depend upon the outcome of the Rates case which remains undecided. These assumptions in Order 73-12-36 are therefore arbitrary, capricious and without support in the record. Further a decision in the Rates case is needed to provide a comparison between the Air Express rates and the rates offered by the airlines and the forwarders for their alternative services.

(a) The Board's conclusion that Air Express cannot continue is largely based on the assumption that REA and the airlines could not agree on the division of Air Express revenues (Order 73-12-36, p. 23). But both this proceeding and the Investigation of Air Express Rates, Docket 22387, were initiated in response to REA's Petition and Complaint of April 9, 1970 in Docket 22096, in which REA contended that the dispute was one which the Board had a statutory duty to determine under Sections 404 and 411 of the Federal Aviation Act, and to prescribe divisions under Section 1002(h). In the Rates case, REA contended that the amount which REA pays the airlines for Air Express should be fairly related to what other airline customers pay for air transportation. Thus, until the Air Express Rates case is finally decided, the assumption that the dispute over Air

Express divisions cannot be resolved or that continuation of Air Express hinges upon the agreement of the airlines, is unwarranted, without support in the record, and contrary to the statutory mandate. Section 404(a) of the Act imposes upon the airlines the duty to establish divisions of joint rates, such as those in Air Express, which are "just, reasonable, and equitable," and non-prejudicial. Trailways of New England, Inc. v. Civil Aeronautics Board, 412 F.2d 926 (1st Cir. 1969). To make the continuation of an important public service be importantly influenced by the terms upon which the airlines in their own self-interest might be willing to agree, without measuring the reasonableness of those terms, would be to negate the statutory purpose. No one denies that some of the airlines need more profits, but the discriminatory treatment of one portion of their business as compared with other competitive services, should not be the means of achieving them.

REA and the airlines have not had the opportunity to seek agreement in a context which includes whatever guidelines result from the Rates case. Basically the airlines have refused to provide REA the on-line service needed for Air Express except on their own terms as to (a) fully allocated costs plus a profit for Air Express when they by their own action file tariffs which will recover only incremental costs for air freight, and (b) non-dual operations by REA. Such a position raises serious questions under the antitrust laws. See Otter Tail Power Co. v. United States, 409 U.S. 820 (1973).*/

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*/ In Order 73-12-36 the Board found that "the airlines would be willing to lessen their veto power over air express
(Footnote continued on next page.)

The Board's prior approval of Agreement 12866 created block bargaining power on the part of the airlines which led to the dispute between them and REA. Having done so, the Board has a continuing duty to consider and alleviate the anti-competitive effects which might result. Cf. Denver & R.G.W.R. Co. v. United States, 387 U.S. 485 (1967); Gulf States Utility Co. v. Federal Power Commission, 411 U.S. 747 (1972).

The end of an arrangement because of a group bargaining position taken to enforce discriminatory pricing techniques, brings antitrust considerations sharply into play:

> "It is unquestionable that price discrimination used as a means of effectuating a combination or conspiracy to unreasonably restrain trade may result in a violation of Section 1 of the Sherman Act. Similarly, price discrimination may be brought under Section 2 of the Sherman Act when used to gain monopoly power or further a conspiracy to monopolize or attempt to monopolize. These are also within the reach of Section 5 of the FTC Act as 'unfair methods of competition' or 'unfair acts or practices,' including the Commission's jurisdiction over incipient as well as full blown Sherman Act violations." (Oppenheim & Weston, Federal Antitrust Laws (3d ed. 1968), 626-7.) */

Footnote continued from page 9.

rate changes if--but only if--the airlines could be assured that air express rates would in all cases be high enough to cover the airlines' fully-allocated costs (including profits) and that the airlines would receive a share of revenues equal to those fully-allocated costs in respect to each shipment." (p. 27) This position was taken by the airlines though they many times have admitted they have been conducting air freight operations at a loss (Order 72-7-36, dated July 12, 1972). The position was an attempt on the part of the airlines to use their group bargaining power--sanctioned by the Board-- to discriminate in price against REA. The Board has in no way approved the taking of such a position by the airlines in the past. Indeed, in the first definitive consideration given to the matter, the Board pointedly referred to the "anomalous situation which permits the air carriers to set tariff rates for REA and at the same time compete with REA for air cargo traffic." Air Freight Forwarder Case, 9 C.A.B. 473, 486 (1948). No explanation is given by the Board for the apparent change in its view in Order 73-12-36 with respect to REA's request for ability to adopt its own tariffs.

*/ This would also be a violation of FAA Section 411 as alleged in REA's original Petition and Complaint, Docket 22096.

Having sanctioned the creation of dominant economic power on the part of the airlines, the Board cannot leave its object in a helpless position at the time the arrangement comes to an end, any more than it can permit over-reaching to occur at its inception, for the Board has an on-going supervisory responsibility. See Hughes Tool Co. v. Trans World Airlines, 409 U.S. 363 (1973)

(b) Another assumption relied on by the Board to defeat REA's request to perform dual operations is its financial situation (Order, p. 25). Yet the question of what sum of money REA should have had from Air Express divisions since April 9, 1970 is at issue in the Rates case. Until the Board has performed its duty to provide REA with "just, reasonable, and equitable divisions" under Section 1002(h) of the Act, any conclusions about REA's financial situation would be decidedly premature and without support in the record. In determining what is reasonable REA's need for profits to attract the necessary capital will be an important consideration. In addition, in determining the reasonableness of Air Express rates, the Board has a duty to determine the sum of money REA needs to enable it to attract sufficient capital.

(c) The Board's conclusion that granting REA rate freedom or dual authority would cause problems is based on the assumption that there would be "cost accounting difficulties." (Order, pp. 29, 32.) The matter of cost accounting for Air Express is at issue in the Rates case. The

Board cannot assume that the difficulties are so great as to merit denial of authority to REA until it allocates REA's and the airlines' Air Express costs in the Rates case. In any event, such cost accounting difficulties cannot be avoided no matter what the arrangement. For example, if an alternative service is developed with pickup and delivery, the Board will not be able to avoid determining the cost thereof, if it is to assure the shippers of a just and reasonable charge.*/

II. Practical Considerations As Well As The Public Interest Support Both A Longer Transitional Period And A Period of Dual Operation

Under the Board's Order, Air Express terminates immediately when REA commences air freight operations. This would cause the grave hardship which might be occasioned by a complete switch-over in operations on a given date for the countless large and small shippers who depend upon its Air Express service.

Air freight forwarding differs in numerous very significant respects from Air Express. While the latter experience will be helpful in accomplishing the transition, even a company with a great depth of capital would have difficulty in making a complete change in business on a specific date. REA does not have such capital. Moreover, unless REA can continue Air Express operations during the start-up period, it will have unused facilities and equipment which cannot be easily adapted to the new operation. Large numbers of employees will require

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*/ See first footnote on p. 21 infra.

immediate training. These circumstances will result in large losses of revenue compounded by very large start-up costs. REA should not be required to abandon the Air Express service it has conducted for so many years until it has had reasonable opportunity to do so on an orderly basis.

The transition from Air Express has four key aspects which must mesh harmoniously: (1) necessary adjustments by the shippers in their arrangements, (2) operational changes by REA, the airlines, and the forwarders, (3) administrative changes (accounting, handling of claims, billing, communications, shipment control, etc.), and (4) required tariff modifications and sales/marketing adaptations. These four aspects are discussed in more detail below.

1. The Shippers

The shipping public must be protected during the transitional period. Shippers need to use this time to make alternative arrangements adequate to safeguard their interests when Air Express terminates. The record in this proceeding makes clear that the dislocation which shippers will experience will be substantial, and that its impact must be cushioned insofar as the Board can do so. Specifically:

(a) The Board's Order is founded on the assumption that other indirect carriers will serve the markets and carry the commodities which REA now serves and carries via Air Express. This assumption is not supported by the record. The Board found that "no community will lose air cargo service solely because of our action." (p. 20) This is directly

contrary to Administrative Law Judge Keith's finding that "they all [air freight forwarders] lack REA's geographical coverage" (I.D. 36). As Judge Keith pointed out, the tariffs of the air freight forwarders--unlike those of REA--do not cover pick-up and delivery to all airport cities, and at many points they "serve" they do not originate shipments. (I.D. 36)

The Board also erred by completely ignoring the shippers' testimony that only Air Express could meet their needs. As Judge Keith found (I.D. 19-21), all the shipper parties in this case (National Industrial Traffic League, National Small Shipments Conference, Drug and Toilet Preparation Traffic Conference, and Allied American Bird Company) took the position that they need Air Express and that forwarders should not be permitted to enter the Air Express market. Some shippers, like the Allied American Bird Company, testified that the termination of Air Express would put them out of business. (Tr. 1399, 1412-1413)

In addition to the shippers separately represented, REA presented a survey of 175 supporting shippers, and direct testimony of 13 shippers and 3 other public witnesses all of whom stated that they rely on Air Express service (REA-354).

A number of shipper witnesses testified that they use REA because of its greater geographic coverage (Tr. 1036, 1044, 1396, 1400, 1466, 1836, Exhibit REA-354) and its greater commodity coverage (Exhibit REA-354, Tr. 1086, Exhibit AAB-100, AAB-200-328, AAB-600-603). REA provides service for the non-professional occasional shipper who has limited other alternatives and whom the freight forwarders do not seek to

serve. Such shippers must be given an interim period to see if any other service is adequate for their purposes.

The Board relied on air freight forwarder "plans" to provide service to all communities and for all commodities (pp. 19, 21). The fact remains that there is nothing in the past performance of the forwarders which permits the Board to assume that they will provide such service.*/ As stated above, until they file tariffs reflecting reasonable rates for all commodities, covering service to the communities now served by Air Express, no one can know whether or how their plans will be implemented, and the shippers will be without any means of fulfilling their transportation needs.

(b) The Board concluded that aircraft priority is no longer a significant factor in Air Express (p. 17). This finding is erroneous on the record made before the Administrative Law Judge and is opposed to today's facts and experience. Moreover, it is inconsistent with the Board's determination that priority service must be provided by the airlines.

Circumstances of airline operation have changed drastically since the record herein was developed for reasons of which official notice can (and should) be taken. When the record was made, few

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*/ It should also be noted, as REA explained in its brief to the Board (pp. 46-47), that the forwarders' purported promises to operate the equivalent of an Air Express service were--in addition to their other deficiencies--limited to representations that they would provide service by surface means, not by air. Shulman, for example, proposed to truck its supposedly "air" shipments for distances of over 100 miles to and from major airports (TR. 2287).

It is especially noteworthy that at least two of those air freight forwarders who opposed REA and proposed to provide their own priority service are no longer in air freight forwarding (Santa Fe and Domestic Air Express).

airline flights left cargo behind, at least at non-peak periods (Order, p. 16). The current fuel crisis has changed this situation dramatically. On October 12, 1973, the U.S. Energy Policy office adopted regulations establishing a mandatory fuel allocation program that imposes controls on "middle distillate fuels" including airline turbine fuel. In Order 73-10-110, dated October 31, 1973, the Board found that "the airlines are going to have to make do with 10 percent less fuel than amounts their planned level of service would have required." (p. 2) More recently, the Board, in Order 73-12-32, dated December 7, 1973, found that the airlines were required to exist on 25 percent less fuel than needed for planned operations. A reduction in service of this magnitude has already created severe shortages of cargo capacity on both major and minor routes. In addition, the U.S. Postal Service has been tendering all loose sacks of mail, including first-class mail, on a priority basis, under Board Show Cause Order 73-8-145, which has never been finalized. This has further aggravated the capacity problem. The increased use of small package services by the airlines has also limited space available to other types of cargo--property that formerly moved as freight now moves with baggage priority.

In the face of the fuel crisis, backlogs of shipments of live animals and other critical items can be expected unless Air Express with its priority is continued. It should

be noted that the Government Operations Subcommittee of the House of Representatives has recommended that the Board monitor conditions provided for the shipment of live animals (New York Times, Dec. 28, 1973).

Many shippers (e.g., eye banks, live animal shippers, blood banks, radioactive compound shippers and pharmaceutical drug shippers) have testified that they rely on Air Express because of its speed (Exhibit REA-354, NED-203, Tr. 1025, 2312, 2337, 2870, 1140, 1129, 1102, 1593). If the Board's Order is not changed, they will not be able to turn to Air Express at a time when sufficient capacity is not available for ordinary air freight.

The Board assumed in its Order that these shippers will be able to turn to the air freight forwarders, which the Board erroneously finds (pp. 14-15), are "as fast or faster" than Air Express. The record does not sustain this erroneous conclusion as a generality and it is contrary to Judge Keith's finding (I.D. 48). Moreover, the Board failed to consider that the rapidity with which Air Express moves has been penalized by artifical constraints compelling a division of traffic among the airlines. REA asked to have these constraints deleted from the Air Express arrangement (Exhibit REA-T-1, p. 7), a request which the Board should not have ignored in reaching its conclusion.

In addition, the evidence on which the Board relies was compiled before the fuel crisis. There is every reason

to believe that the air freight forwarder service, confronted by backlogs, is substantially slower today. Some forwarders are now compelled to truck air freight substantial distances. Traffic tendered by the forwarders to Air Express has increased greatly during recent months.

Therefore, the Board's findings with respect to the speed of Air Express are not valid on the record as made, and a fortiori are not valid in today's changed circumstances. Because of the impact of the fuel crisis, the shippers' need for Air Express is greatly increased, and the termination of Air Express should be deferred at least until that crisis is behind us.

2. Operational Aspects

The Board's Order requires operational changes by three groups (freight forwarders, the airlines and REA). REA must acquire, by purchase or lease, sufficient containers, specialized pickup and delivery equipment and air freight consolidation facilities to become an air freight forwarder. It will also have to adjust the distribution of its labor force so as to use employees where they are needed for the new operations. It will have to train employees in new operating procedures, billing, rating, containerizing and all facets of air freight. For example, the air freight rate structure is much more complex than the Air Express rate structure and requires more knowledge on the part of employees and managers. Conversion to air freight forwarding can be done without too much hardship if REA has sufficient capital; a period of dual

operations of at least 18 months would provide such capital and prevent severe furloughing of employees. It would prevent the disorder which would be caused by the requirement to end Air Express prior to commencing freight forwarding.

The forwarders must acquire facilities and equipment and provide trained representation at thousands of points throughout the U.S. They must also acquire specialized facilities enabling them to handle unusual commodities such as perishables, defense traffic and high-value shipments. Handling of live creatures requires ventilated trucks, warm rooms in terminals, and the ability to feed and water them where necessary (Exhibit REA-301). In addition, coordination with the ASPCA and humane societies is necessary.

The airlines have already indicated that implementation of a priority service would cause severe operational and other difficulties. Airline witness Eichner testified at the hearing in this case that unless the airlines can agree on a control agency for transporting the priority cargo between terminals, there will be too many trucks in the airport, causing congestion and security problems (Tr. 386). An excess of trucks will also waste fuel in a time of severe shortage. Moreover, unless a single agency is responsible to keep a record of when traffic arrives, the airlines will not know how to plan priority (Tr. 396). Only by an agreement can the airlines provide for speedy interlining of priority traffic (Tr. 373). If the airlines were to agree to establish an agent responsible for ground handling and interlining

of priority traffic, it would involve creating a new entity,*/ which would take substantial time.

3. Administrative Aspects

Under the Air Express Agreement, REA handles billings, claims and tracing on behalf of the airlines. Mr. Eichner testified for the airlines that unless there is a centralized agency to handle such matters, multiple billings will be necessary (Tr. 380-381). Thus, the airlines bill the forwarders and the forwarders bill the customers. On interline shipments the airlines bill each other. Moreover, an off-line trucker who handles air freight bills the forwarders or the airlines separately (Tr. 437). On the other hand, for Air Express there is only one bill, handled by one organization--REA.

Should Air Express terminate, the airlines will probably have to establish a new central billing agent and will have to increase rates to the shippers for the service. REA will also have to change its method of billing as an air freight forwarder with all of the attendant controls, systems, and paperwork required.

4. Required Tariff Modifications and Sales/Marketing Aspects

The Board assumed in its Order that if Air Express is terminated and REA becomes an air freight forwarder, the airlines and forwarders will be free of constraints, be able to fill any service needs, and achieve a more optimum balance of price and service. (p. 8) Whatever the prospects for the

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*/ That entity, if it is to function properly, would have to be a much more expensive twin of what REA Express is now.

long run, there can be no effective marketing of the new services until the shippers, including the forwarders and REA, learn what the airlines will make available in their tariffs covering the new services to be offered.*/ Needed specifics will include arrangements for priority service on a single bill of lading to all airports in the United States, interline arrangements by the airlines, and facilities in the terminals for live animals and other shipments carried by Air Express which require special handling.**/ Special arrangements among the airlines will be needed dealing with divisions so that shippers, forwarders and REA will not be subject to the double minimums that the Air Freight Forwarder Association has stated to be the reason for the failure of the forwarders to serve small communities. (REA-R-T-5). The time required for resolution of the dispute among the airlines regarding joint passenger fares indicates that airline divisions should be specified at the

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*/ In Order 73-12-116 the Board suspended and ordered investigated a tariff filing by United Air Lines for the purpose of imposing a surcharge of $3 per shipment on hazardous materials--a type of shipment handled best by Air Express. The Board directly rejected United's assertion that the proposed increase could be passed on to shippers because of price inelasticity, and stated, ". . . the issue is, in our opinion, whether this additional burden upon consumers is reasonable and otherwise lawful." (p. 3.) This issue will raise its head many times, we predict, if the airlines and forwarders attempt to handle the hundreds of such specialized commodities which Air Express now carries and for which REA now handles all the paperwork.

**/ The current airline small package services, in addition to being very expensive, are restrictive as to shipments carried, geographical coverage, availability of pickup and delivery service, and claims liability. The new priority tariffs must correct these deficiencies if the shipping public is to be adequately served.

earliest date possible. See Orders 70-1-148, 70-1-159, Domestic Passenger Fare Investigation, Phase 4.

Once the airlines file their tariffs, then the forwarders will have to file tariffs to provide service to small communities and for unusual commodities. Until they do so, the Board , REA and the shipping public will not know whether the forwarders really intend to compete for such traffic, or will instead file tariffs not offering such comprehensive services or file tariff rates at which the traffic cannot economically move. Only when all these tariffs are filed and found reasonable will the air transportation industry, including REA, be able to develop intelligent sales plans designed to meet the needs of shippers affected by the service voids caused by the termination of Air Express.

The considerations listed above require a deferral of the termination of Air Express and an interim period of dual operations. The Board's reasons for denying dual authority do not preclude such a transitional phase.

The Board alleges that dual authority might help "REA to dominate the entire indirect carrier industry." REA submits that this speculation is totally erroneous, particularly in light of REA's financial posture. The survival of an important, unique transportation facility, involving both surface and air, should be of vastly greater concern at this point in time than merely speculative fears as to excessive strength in the future. That problem, if it should develop, can be coped with in due course. The Board does not explain

why such dual authority is permissible for the airlines (who collectively for years have had a monopoly of the air haul services purchased for Air Express) but not for REA, which is subject to far more competitive pressures.*/ More importantly, the continuation of an important and unique transportation facility, involving both surface and air, is essential until an adequate replacement service can be provided (assuming arguendo that the Board's hypothesis as to the eventual feasibility of such a replacement service is correct--a hypothesis which we think is invalid).

Conclusion

The major dislocations which will be caused by the Board's present Order, and the substantial adjustments which will be required by the shippers, the airlines, the forwarders, and REA, necessitate a longer transitional period than is provided in Order 73-12-36. If the Board's order as presently constituted were to become effective, the predictable result is chaos. The same factors also necessitate a transition during which REA can operate as a forwarder without depriving shippers of Air Express. Surely after so many years of valuable public

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*/ The Board referred, we believe incorrectly, to Air Express service as a "monopoly." (p. 8) In terms of standard economic concepts, this description is demonstrably incorrect. See United States v. DuPont de Nemours & Co., 351 U.S. 377 (1956). Is it a "monopoly" to handle over 6-1/2 million shipments a year when faced with the competition of over 200 forwarders and the airlines themselves who are actively and continuously at work selling their own cargo services which differ from Air Express principally in priority, an aspect which the Board found to be of little practical importance? Does the residue of business which others don't care to handle, except on their own terms and for a higher price, constitute a "monopoly"?

service, especially in a time of drastically changing conditions and energy crisis, the abolition of Air Express can be deferred so as to insure a reasonable transition period in the public interest.

For these reasons, REA respectfully requests (a) that it be permitted to operate both Air Express and air freight forwarding during a transitional phase before Air Express terminates, and (b) that this phase extend until at least (i) six months after final decision in the Rates case and the plans of the airlines and air freight forwarders to provide priority service for all commodities and communities now served by Air Express are approved by the Board, or (ii) eighteen months after final decision in this Docket 22388, whichever is longer. REA also requests that the Board direct the airlines to submit by March 1, 1974 their detailed proposal for priority service, that their proposal be made available for comment, that the forwarders' plans be submitted within 30 days after the airlines' plans are approved, and that the Board reserve its right to extend the transitional phase beyond the date herein sought by REA if the continuation of the fuel crisis, or inadequacies of the airlines' or the

air freight forwarders' plans, reveal the desirability of such action.

Respectfully submitted,

Craig Mathews

Craig Mathews
John S. Hoff

Leva, Hawes, Symington,
Martin & Oppenheimer
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Counsel for REA Express, Inc.

Of Counsel:

Arthur M. Wisehart
Peter G. Wolfe

January 2, 1974

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of January, 1974, served the foregoing Petition of REA Express, Inc. for Reconsideration by mailing a copy by first class mail, postage prepaid, to the following persons at the addresses shown:

Mr. Russell S. Bernhard
1625 K Street, N. W.
Washington, D. C. 20006

Mr. Charles Laatz
7401 World Way West
International Airport
Los Angeles, California 90009

Mr. John L. Richardson
1660 L Street, N. W.
Washington, D. C. 20036

Mr. Robert N. Meiser
1730 Rhode Island Avenue, N.W.
Washington, D. C. 20036

Mr. David M. Schwartz
1700 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

Mr. William R. Kraham
Watergate Six Hundred
Washington, D. C. 20037

Mr. Paul Reiber
1625 Eye Street, N.W.
Washington, D. C. 20006

Mr. John Wilson
Hartz Mountain Products
50 Cooper Square
New York, N.Y. 10003

Mr. Richard P. Taylor
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036

Mr. Paul Y. Seligson
2021 L Street, N. W.
Washington, D. C. 20036

Mr. Joseph B. Goldman
1776 K Street, N. W.
Washington, D. C. 20006

Mr. Robert D. Rierson
Greyhound Tower
Phoenix, Arizona 85077

Mr. Frederic L. Wood
914 Washington Building
Washington, D. C. 20005

Mr. Jerry W. Ryan
1100 Connecticut Avenue, N.W.
Washington, D. C. 20036

Mr. Arthur D. Bernstein
1054 31st Street, N.W.
Washington, D. C. 20007

Mr. Robert W. Oliver
1100 Connecticut Avenue, N.W.
Washington, D. C. 20036

Mr. John C. Wisener
World Headquarters Building
Cargo Building 89
John F. Kennedy International
Airport
Jamaica, New York 11430

Mr. Michael J. Roberts
1660 L Street, N. W.
Washington, D. C. 20036

Mr. Robert L. Hall, Jr.
13 East Lake Street
Northlake, Ill. 60164

Mr. William Q. Keenan
233 Broadway
New York, N.Y. 10007

Mr. Henry Jerum
151 Oliver Street
Newark, N.J. 07105

Captain Richard A. Peterson
Regulatory Law Office
Office of the Judge Advocate General
Department of the Army
Washington, D. C. 20310

Mr. Marshall Meyers
1133 15th Street, N. W.
Washington, D. C. 20005

Mr. Gary L. Zimmerman
Suite 201
9100 Wilshire Boulevard
Beverly Hills, Ca. 90212

Mr. Rubin Steiner
Trans-Air Freight System, Inc.
138-01 Springfield Boulevard
Jamaica, N.Y. 11413

Mr. Max A. King
Vice President
Emery Air Freight Corporation
P. O. Box 3022
Wilton, Conn. 06897

Mr. Harry Beecken
815 15th Street, N. W.
Washington, D. C. 20005

Mr. Melvin E. Bailet
Wells Fargo Armored Service Corp.
P. O. Box 4313
Atlanta, Georgia 30302

Mr. William G. White
Consolidated Freightways, Inc.
601 California Street
San Francisco, Ca. 94108

Mr. B. N. Brenno
CF Air Freight, Inc.
1700 South El Camino Real
San Mateo, Ca. 94402

Craig Mathews

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

INVESTIGATION OF AIR EXPRESS RATES	:	Docket 22387
DOMESTIC AIR FREIGHT RATE INVESTIGATION	:	Docket 22859

MOTION FOR LEAVE TO FILE DOCUMENT

REA Express, Inc. (REA) hereby files, pursuant to Rule 12(b) of the Board's Procedural Regulations, a motion for leave to file a motion to consolidate after the Prehearing Conference.

On January 14, 1974, the Air Freight Forwarders Association (AFFA) filed an answer to REA's Petition for Reconsideration in the Express Service Investigation, Docket 22388. In its answer, AFFA took the position (pp. 5-6), for the first time, that the Investigation of Air Express Rates, Docket 22387, should be abandoned because the record in that case is stale.

REA believes that the record in the Express Rates Case needs to be updated, and the Board's proper

action would be to consolidate the Express Rates Case with the Domestic Air Freight Rate Investigation, Docket 22859. Not until AFFA filed its answer, however, did REA know of its position regarding the record in the Express Rates Case.

In addition, the Board in Order 73-12-36 in the Expree Service Investigation ordered the airlines to establish a priority service and file tariffs therefor as part of their duty to provide air freight services. The costs of new priority air freight services presumably will have to be determined in the Freight Rate Case in any event.* The costs of Air Express for similar service are closely related and highly relevant to the determination of rates for such priority service.

REA could not have known previously of the need for such comparative consideration of Air Express and priority air freight rates.

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*See Order 70-12-44, dated December 8, 1970.

WHEREFORE, REA Express, Inc. requests leave to file the attached motion.

Respectfully submitted,

Peter G. Wolfe

Peter G. Wolfe
REA Express, Inc.
219 East 42 Street
New York, New York 10017

Of Counsel: Arthur M. Wisehart

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the above motion upon all parties to the Investigation of Air Express Rates, and the Domestic Air Freight Rate Investigation by first class mail.

Peter G. Wolfe

Peter G. Wolfe

737(a)

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

INVESTIGATION OF AIR EXPRESS RATES	Docket 22387
DOMESTIC AIR FREIGHT RATE INVESTIGATION	Docket 22859

MOTION TO CONSOLIDATE

On January 14, 1974, the Air Freight Forwarders Association (AFFA) filed an answer to the Petition for Reconsideration of REA Express, Inc. (REA) in Docket 22388, the Express Service Investigation. In that answer, AFFA took the position that the Investigation of Air Express Rates, Docket 22387, should be abandoned because the record is stale, and therefore that the termination of Air Express should not be deferred until after final decision in the Rates Case.

REA believes that the proper course of action is to consolidate the Express Rates Case with the Domestic Air Freight Investigation, Docket 22859.

The record in the Freight Rate Case requires

updating. There are many reasons for this.

1. The allocation of airline costs by the Bureau of Economics has drastically changed since the Express Rates Case. The Bureau of Economics exhibits in the Freight Case are inconsistent with their exhibits in the Express Rates Case. If the Freight Case Bureau techniques had been used in the Express Rates Case, the exhibits would have shown airline profits on Air Express of over $5 million! See Exhibit REA-R-T-1 in Docket 22859, which is hereby incorporated by reference.

2. The allocations of REA costs by Judge Shapiro between surface and air were based on relative volume, as of 1970. This has drastically changed. Air Express volume is now a much larger percentage of total REA volume than it was at the time of the hearing, and the cost allocations would have to change.

3. As of November, 1971, REA established new service standards for Air Express, increasing the amount of labor and equipment devoted to Air Express. This would also require a change in the allocations of expense between air and surface.

4. The forecast year used was 1970, and inflationary cost increases since that date have resulted

in far higher costs than were current at the time of the hearing. It is of particular interest in that regard that Administrative Law Judge Shapiro did not allow any cost increases for inflation (I. D. 32). Whether the higher costs which have occurred since then have impacted evenly on the costs of REA and the airlines can only be speculation at this point.*

Because the record needs to be updated, the Board should consolidate the Express Rates Case with the Domestic Air Freight Rate Investigation, Docket 22859.

The Express Rates Case can not be merely abandoned and capriciously disregarded with the continuing existence of a company and an essential public service at stake. It was instituted upon REA's filing of a Petition and Complaint charging that the airlines had discriminated against REA with regard to Air Express rates and divisions

*Other reasons for updating have been brought out by REA in its appeal to the Board in the Express Rates Case from Judge Shapiro's rulings which excluded (1) the airline study of priority made for the Express Service Case, (2) a United Air Lines exhibit in the Domestic Priority and Non-Priority Mail Rate Investigation, Docket 23080, which showed the relative manpower involved in loading various types of traffic, (3) the Booz, Allen & Hamilton study of Air Express Costs, and (4) excerpts from the testimony of L. John Eichner, witness for the airlines, in the Express Service Case, on the subject of the relative costs of Air Express and air freight. All of the exhibits first became available to REA subsequent to the hearing in the Express Rates Case, and are relevant to the issues involved in that case.

in violation of Sections 404(a), 404(b) and 411 of the Act, and requesting an investigation of Air Express rates and divisions. Uncer Section 1002(a),

> "it shall be the duty of the ... Board to investigate the matters complained of ... [where] there shall appear to be any reasonable ground for investigating the complaint."

The Board, by instituting the Rates Case and putting Air Express rates and divisions in issue, found that, as to these issues, there was obviously reasonable ground for investigating the issues raised by the complaint. It therefore has a statutory duty to investigate these issues completely. Further, REA's claim not only relates to the present and future, but also is retroactive to April 9, 1970 (See Order 71-2-68, dated February 12, 1971). REA has spent many months of time and expended thousands of dollars to protect its interests. It even filed an appeal to the United States Court of Appeals for the Second Circuit from the Board's dismissal of REA's Petition and Complaint (REA Express, Inc. v. Civil Aeronautics Board, No. 354 74), which was only dismissed as moot after the Board entered Order 71-2-68 which guaranteed REA's right to a hearing on the issue of retroactive adjustment of divisions. Hence the Board must conclude and decide and may not abandon

the Express Rates investigation whatever its ultimate disposition of the Service case.

The Board's denial of REA's prior motion to consolidate these two cases in Order 72-7-15, July 6, 1972, is not a precedent against consolidation now. In it prior motion for consolidation REA pointed out that joint consideration of the Express Rates and the Freight Rate cases was necessary (1) because Air Express and air freight are costed from a common pool and they must be costed on a consistent basis, and (2) they are competitive services and so must be priced on a non-discriminatory basis. The Board conceded that certain evidence in the Freight Case might be relevant to a proper determination in the Express Rates Case, (Order 72-7-15, p. 3) but denied the motion on the grounds that consolidation would unduly delay the Express Rates decision. Since that date, 18 months have passed without a decision in the Express Rates Case. The record is badly in need of updating, and the Board's only way of deciding the case on an adequate record is to order a rehearing. We continue to believe that a consolidated hearing is necessary for a consistent decision in both cases, avoiding prejudice to any party. We now also believe that it will allow a decision on a fresh record.

Further, the Board's recent decision in the Express Service Investigation, Docket 22388, is a further reason for consolidation.

That decision requires the airlines to file tariffs for priority services to supplant Air Express. Whether their costs will permit them to do so at anything like the present Air Express rates remains to be seen. The costing out of these various services, like the airlines' present premium highly expedited services, will be required in the Air Freight Rate Case,* and the consolidation of the Express Rates case will permit comparison with costs of a similar service.

In the Freight Rate case many delays have already occurred at the request of the parties involved. The Parsons Study, on which much of the parties' evidence of non-capacity costs is based, is undergoing further refisions (See letter of REA Express to Administrative Law Judge Present, dated January 15, 1974). In addition, parties have indicated that forecast data could not be supplied for some time due to the fuel crisis (Letter of TWA to Administrative Law Judge Present, dated January 17,

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*Order 70-12-44, dated December 8, 1970; Order 73-12-116, dated December 28, 1973.

Thus consolidation with the Express Rates Case is not likely to cause additional delays and in any event would save time over a rehearing of the Air Express Rates Case (the only other legally permissable option to an outdated record), and a separate hearing for the new priority rates.

WHEREFORE, the Board should consolidate with the Domestic Air Freight Investigation Docket 22859, the Investigation of Air Express Rates, Docket 22387.

Respectfully submitted,

Peter G. Wolfe

Peter G. Wolfe
Attorney for REA Express, Inc.
219 East 42nd Street
New York, New York 10017

Of Counsel: Arthur M. Wisehart

Order 74-2-118

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.,
on the 27th day of February, 1974

Petition of AIRLINES PARTICIPATING IN AIR EXPRESS SERVICE for authorization of inter-carrier discussions concerning the creation of industry-wide priority cargo service.	Docket 26238

ORDER AUTHORIZING DISCUSSIONS

In Order 73-12-36, adopted December 7, 1973, the Board decided the Express Service Investigation, Docket 22388. The Board found, inter alia, that the certificated air carriers providing scheduled interstate and overseas air transportation are under an obligation to offer priority service, under tariffs so providing, as part of their duty to provide adequate interstate and overseas air transportation. 1/ The Board recognized that some inter-airline coordination would be necessary and, accordingly, stated its receptivity to requests for inter-carrier discussions about the provision of highly expedited priority cargo service. 2/

The airlines participating in the present air express service have now filed a petition requesting Board authorization for such discussions. 3/ The petition asks for authorization to enter into inter-carrier discussions concerning the creation of an industry-wide priority cargo service. It says these discussions would principally concern operational

1/ Order 73-12-36, at page 41, finding number 6.
2/ Id., at page 39.
3/ These airlines are Air Canada, Airlift International, Alaska, Allegheny, American, Aspen, Braniff, Air France, Continental, Delta, Eastern, Flying Tiger, Frontier, Hughes Airwest, National, New York Airways, North Central, Northwest, Ozark, Pan American, Piedmont, SFO Helicopter Airlines, Seaboard World, Southern, Texas International, Trans World, United, and Western.

problems involved in the interlining of priority cargo traffic. The division of rates between interlining carriers, and the tariff structure with respect to the size and weight of shipments and types of commodities would be considered and discussed, but rate levels would not be discussed in the initial phases of these meetings.

The petition says that the presence of observers from the Board or other governmental agencies at the meetings would not be objected to, but that there does not appear to be any necessity for shipper representatives to be present at these meetings. The petition also asserts that air express service may terminate in the immediate future, and that in order to avoid a lapse in priority cargo service it is requested that the airlines be authorized to meet at the earliest date possible, and that the Board issue the discussion authorization without allowing the usual time for replies to the petition. 4/

Responses to this petition have been received from the Air Freight Forwarders Association (AFFA), the Society of American Florists (SAF), the Pet Industry Parties (PIP) 5/, the National Air Transportation Conferences, Inc. (NATC) 6/, and REA Express, Inc. (REA).

AFFA requests that it be given the opportunity to participate in the requested discussions because of the nature of the subjects to be discussed and the air freight forwarders' interest and concern with those subjects. It contends that air freight forwarders can be expected to be the major users and marketers of the highly expedited service that the airlines will discuss. AFFA says that there will have to be substantial cooperation between air freight forwarders and the airlines in the planning as well as the use of the new expedited service, and that this can only be accomplished by its participation in, not merely observance of, the discussions.

SAF also asks for participation in the discussions. It says that florists have a vital interest in future space allocations and priorities and that airline discussions without shipper impact would be non-productive.

PIP supports the petition provided that interested shipper parties be permitted to participate in all inter-carrier discussions concerning

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4/ Since replies have already been received within the usual time, this request need not be considered.

5/ PIP consists of two corporations and twenty membership organizations whose members market live animals and related supplies throughout the world utilizing air transportation services.

6/ NATC is a trade association of Part 298 commuter air carriers and air taxi operators.

the creation of priority air cargo service. They say the substitution of priority service by the airlines for air express service and the details of the new service will have a direct effect on the continued usage of air transportation by live animal shippers and that PIP should, therefore, be allowed to participate with the airlines in the creation of the new service.

NATC supports the petition if conditioned by a requirement that NATC representatives be authorized to participate in the discussions. It argues that the interest of NATC and individual Part 298 carriers as transporters of increasing quantities of cargo, an estimated 80 percent of which is interlined with certificated air carriers, necessitates that they be participants in these discussions. NATC says that relationships between Part 298 air carriers and certificated air carriers can be coordinated and problems resolved most effectively at these discussions, and that its participation will not complicate or otherwise adversely affect or delay the course of the discussions.

REA moves that the petition be rejected as improperly filed in Docket 26238, or in the alternative, that it be consolidated with the Express Service Investigation. It argues that since the new priority service to be discussed is a condition precedent to the termination of air express and since the requested discussions would implement Order 73-12-36, a request for discussion authorization can only properly be considered in the Express Service case. Alternatively, REA moves to consolidate the petition with that case so that the Board can determine whether the plan for priority service developed by the airlines is adequate on the basis of the record in Express Service and is implemented to provide a reasonable transition from air express. REA incorporates by reference its petition for reconsideration of Order 73-12-36, wherein it alleges that the Board does not yet know if the new priority service will provide an adequate replacement for air express service, and says that the airlines should be directed to submit their plans by March 1, 1974. REA also says that shippers should be permitted to participate in or observe the inter-carrier discussions. 7/

REA's motions will be denied. The petition herein results from the decision of the Board in the Express Service Investigation, but there is no reason why it must or should be considered only in the context of that proceeding. The requested discussions will consider the formulation of a new type of service which the Board has found certificated scheduled air carriers under an obligation to provide. The Board can monitor the progress of the discussions sought herein while it considers REA's petition for reconsideration and any other matters in the Express Service Investigation, without placing both in the same docket or consolidating them.

7/ The petitioners answered REA's motions, arguing that their petition should not be considered as part of the Express Service case and that Order 73-12-36 does not make the establishment by the airlines of a priority cargo service a condition precedent to the effectiveness of that order. Emery Air Freight Corporation has also filed an answer, opposing REA's motions for similar reasons.

For the reasons stated in the Express Service Investigation order, the requested discussion authorization will be granted, excluding the discussion of rate level, structure and division matters. 8/ We are authorizing discussion of types of commodities to the extent that operational questions, such as interline handling of extraordinary items, may be involved. It is our view that an industry-wide priority service should be available for all commodities now carried in air express.

Since the actual airport-to-airport movement of priority freight would be effected by the certificated scheduled carriers, they shall be the "participants" in the discussions. However, we recognize the importance of thertoles of air freight forwarders and air taxi operators in the movement of air cargo, and we feel that in addition to being allowed to observe the discussions, they and other interested persons shall be allowed to make oral presentations to the discussants. We leave to the discussants the formulation of rules for such oral comments, e.g. whether ad hoc comments from the floor will be allowed or whether more formal presentations will be preferred. However, we will expect the filing of such ground rules and an agenda of each noncontinuous meeting to be filed in this Docket no later than 7 calendar days prior to the holding of such meeting; and a copy of such filing will be required to be served on the present parties to this proceeding and any other persons who previously have made request for such service to counsel for the instant air carrier petitioners. 9/

Finally, we wish to note the pendency of the Petition of the Humane Society in Docket 26244 pertaining to the establishment of a priority air freight service for live animals. We do not rule on that petition at this time. But we do believe that the relief sought therein is relevant to the instant petition insofar as it pertains to the genre of topics to be discussed. Therefore, in the discussions authorized by this order, we shall allow the carriers to consider the degree of priority, if any, which live animals should be given when shipped in the agreed-upon priority service.

The participants in these discussions will be required to submit any agreement or agreements resulting from these discussions for Board approval

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8/ The exclusion of rate matters from the discussion authorization is based on the applicants' statements that they do not intend to discuss rates in the initial phases of their meetings, and our conclusion that such discussion would not be necessary at this time. If an expansion of this authorization is deemed necessary at a later time, the airlines can submit an application, and supporting arguments therefor, then.

9/ Expansion of the "participant" status might unduly complicate the discussions, and is not necessary. The interests of those parties who have expressed interest in these discussions will be adequately served by the procedures described herein, including their rights to comment on any agreement resulting from these discussions (see 14 CFR 302.1608), and, of course, their rights to informally express their views to the airlines at any time, which rights are not in any way derogated by this order.

and such agreement or agreements shall not become effective unless and until approved by the Board. This will enable all interested persons to submit comments to the Board, in accordance with Subpart P of the Board's Rules of Practice (14 CFR 302.1601 through 302.1608), in support of or in opposition to Board approval of any proposed agreement.

ACCORDINGLY, IT IS ORDERED THAT:

1. The petition herein for authorization of inter-carrier discussions concerning the creation of industry-wide priority air cargo service be and it hereby is granted, subject to the following conditions:

(a) All air carriers and foreign air carriers presently participating in air express service shall be permitted to participate in each of these discussion meetings;

(b) These discussions shall not include the subjects of rate level, structure, or division; provided that they may consider types of commodities, if such consideration is limited to operational matters, such as the interline handling of extraordinary items; and provided further that the discussions may consider the degree of priority, if any, which live animals should be given when shipped in any new priority service;

(c) These discussions shall take place in Washington, D.C., at a date, time, and place determined by the participants;

(d) Representatives of the Board, any other governmental body, and any other interested person shall be permitted to attend each of these discussion meetings as observers;

(e) Notices, agenda, and ground rules for the oral expression by interested persons of views to the participants pertaining to each noncontinuous meeting authorized herein shall be sent (1) to all carriers eligible to participate in these discussions, (2) to the Board's Docket Section, (3) to all persons who responded to the petition herein; and (4) to all other persons who so request; such items shall be filed with the Board and sent not later than seven calendar days before each meeting;

(f) Complete and detailed minutes of these discussions shall be maintained by the participants, and such minutes shall be filed with the Board's Docket Section and shall also be sent to all other persons who so request, within five business days from the date of each meeting;

(g) Any agreement or agreements reached as a result of the discussions authorized herein shall be filed with the Board, pursuant to the requirements of section 412(a) of the Act (49 U.S.C. 1382) and Part 261 of the Board's Economic Regulations (14 C.F.R. 261) and Subpart P of the Board's Rules of Practice (14 C.F.R. 302.1601 through 302.1608), and shall not become effective unless and until approved by the Board pursuant to section 412(b) of the Act;

(h) The authorization granted herein shall expire after July 31, 1974; and

(i) The authorization granted herein may be extended, modified, or revoked at any time by the Board or by the Director of its Bureau of Operating Rights (action by the Director of the Bureau of Operating Rights to be subject to the procedures for review of staff action contained in Subpart C of 14 C.F.R. 385); and

2. Except to the extent granted herein, all other motions and requests for relief in this docket be and they hereby are denied.

This order shall be served on all certificated scheduled air carriers and on all parties to the Express Service Investigation, Docket 22388, and on the United States Departments of Commerce, Defense, Transportation and Justice and the United States Postal Service. This order shall also be published in the Federal Register.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Acting Secretary

(SEAL)

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

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EXPRESS SERVICE INVESTIGATION Docket 22388

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MOTION FOR LEAVE TO FILE AN
OTHERWISE UNAUTHORIZED DOCUMENT

REA EXPRESS, INC. (REA), pursuant to Rule 4(f) of the Board's Rules of Practice, moves for leave to file an otherwise unauthorized document, viz. the attached Motion for Extension.

Order 73-12-36 ordered the termination of Air Express effective June 5, 1974. That order was based, in large part, on the Board's determination that REA and the airlines participating in Air Express service (Airlines) would not be able to agree on a method of continuing the service. However, after the Petition for Reconsideration of Order 73-12-36 and Answers thereto were filed, REA and the airlines commenced negotiations to resolve their differences over Air Express, so that the service can continue. Those negotiations are being actively conducted. To give the parties time to reach

an agreement, the effective date by which Air Express would otherwise be terminated must be deferred. Accordingly, REA requests leave to file the attached Motion to request such an extension.

WHEREFORE, REA Express, Inc. moves for leave to file the attached Motion.

Respectfully submitted,

Craig Mathews /jh
Craig Mathews

John S. Hoff
John S. Hoff

LEVA, HAWES, SYMINGTON, MARTIN
& OPPENHEIMER
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
Telephone: (202) 298-8020

Counsel for
REA EXPRESS, INC.

Of Counsel:

Arthur M. Wisehart
Peter C. Wolfe

March 26, 1974

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

EXPRESS SERVICE INVESTIGATION Docket 22388

MOTION FOR EXTENSION

By Order 73-12-36, dated December 7, 1973, the Board ordered the termination of Air Express, effective June 5, 1974. The Board's primary reason for terminating Air Express was that REA Express, Inc. (REA) and the airlines participating in Air Express (Airlines), the Air Express partners, could not agree on the terms for continuation of Air Express (Order 73-12-36, pp. 23-24).

REA and the Airlines are now actively negotiating with a view to eliminating their differences and continuing Air Express service. It will, however, take some time to determine whether these negotiations will prove fruitful. Meanwhile, in order to allow the parties to have an opportunity to negotiate, REA requests the Board to permit Air Express to continue until January 31, 1975. A poll of the Airlines has been taken, and we have been informed that the Airlines support this request.

It would be a tragedy for Air Express to be forced to terminate while there is a possibility of saving it. The importance of the continued survival of Air Express was specified in REA's Petition for Reconsideration of Order 73-12-36, and need not be reiterated here. In addition, since REA's Petition for Reconsideration was filed, REA has been swamped by shippers inquiring about the future of Air Express, and expressing a vital need for the service. This is especially critical in view of today's energy crisis and reduced flight availability. With the current negotiations proceeding positively, there is a high probability that the partners to the Air Express Agreement can re-create a viable, much needed service that satisfies the desires of the CAB, and the shipping public. The Board should therefore grant the requested permission to continue Air Express so that negotiations by the parties to the Air Express Agreement will be able to remedy the primary factor that caused the Board to disapprove the Agreement and thus preserve Air Express.

WHEREFORE, REA EXPRESS, Inc. moves that Air Express be permitted to continue until January 31, 1975.

Respectfully submitted,

Craig Mathews /jth

Craig Mathews

John S. Hoff

Of Counsel:

Arthur M. Wisehart
Peter G. Wolfe

March 26, 1974

LEVA, HAWES, SYMINGTON, MARTIN & OPPENHEIMER
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
Telephone: [illegible]

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of March, 1974, served a copy of (a) Motion for Leave to File an Otherwise Unauthorized Document and (b) Motion for Extension by mailing a copy thereof by first class mail, postage prepaid, to all parties of record to this proceeding.

John S. Hoff

Before the

CIVIL AERONAUTICS BOARD

Washington, D.C.

EXPRESS SERVICE INVESTIGATION
DOCKET 22388

CONCURRENCE OF AIRLINES IN MOTION OF
REA EXPRESS, INC., FOR EXTENSION

The Board's order 73-12-36 in this proceeding, dated and served December 7, 1973, states that approval of Agreement CAB No. 12866 and Agreement CAB No. 17935, pursuant to which the airlines and REA Express provide air express service, is withdrawn effective upon the date REA Express commences air freight forwarder operations or 180 days from December 7, 1973, (i.e. June 5, 1974), which ever date occurs first.

REA Express has filed a motion for extension of the June 5, 1974, date to January 31, 1975. The airlines named in the Appendix hereto concur in the said motion of REA Express to extend the June 5, 1974, termination date for air express service to January 31, 1975, with all other terms and conditions of said Order 73-12-36 remaining unchanged.

This concurrence is submitted for the following reasons:

(a) Such extension will facilitate recovery by the airlines of the substantial debt due from REA Express to the airlines, which debt is being repaid by REA Express to the airlines in accordance with the deferred payment schedule set forth in the Amendment to Agreement CAB No. 17935 filed with the Board on January 25, 1974.

(b) Such extension will enable the airlines to explore with REA Express the possibility of revising Agreement CAB No. 17935, looking toward a continuation of Air Express Service.

WHEREFORE, the named airlines respectfully request that the Board grant the motion of REA Express for extension of the June 5, 1974, termination date in Order 73-12-36 to January 31, 1975.

Respectfully submitted,

Russell S. Bernhard
Attorney for the Named Airlines

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon all parties of record in this proceeding by properly addressed first class mail this 29th day of March, 1974, at Washington, D.C.

Russell S. Bernhard

APPENDIX

Air Canada
Air France
Air Lift International, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.
Braniff Airways, Inc.
Continental Air Lines, Inc.
Eastern Air Lines, Inc.
Flying Tiger Line
Frontier Airlines, Inc.
Hughes Airwest, Inc.
National Airlines, Inc.
New York Airways, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
San Fransicso-Oakland Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Texas International Airlines, Inc.
Trans World Airlines, Inc.
Western Air Lines, Inc.

Before the

CIVIL AERONAUTICS BOARD

Washington, D. C.

EXPRESS SERVICE INVESTIGATION
DOCKET 22388

CONCURRENCE OF NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE IN MOTION OF REA EXPRESS, INC. FOR EXTENSION

Under Board Order 73-12-36 the authority of REA Express to continue to provide air express service to the public will expire June 5, 1974. This order was premised on two important assumptions, namely that (1) REA would promptly commence air freight forwarder operations, and (2) that the airlines would not collaborate with REA in the provision of air express service if REA had the dual status of air freight forwarder and air express company. The Board recognized the existence of public need for an air express service and instructed the airlines to take the measures necessary themselves to supply such a service to the public. To that end the Board has invited the airlines to engage in conferences under the antitrust shelter of Section 412 to organize such an airline sponsored air express service.

Since December of last year when Order No. 73-12-36 issued the factual premises on which it rested have apparently changed and the Section 412 inter-airline conferences which the Board invited have resulted

in no plan whatsoever for the provision of any substitute, adequate or otherwise, for the air express service which is now scheduled to terminate June 5, 1974.

The change in factual premise is reported by the motion by REA Express now pending for an extension of REA's air express authority until January 31, 1975. This motion expresses the willingness of REA to forego the grant of air freight forwarder authority which the Board has made to REA, recites the fact of active and promising negotiations between REA and the airlines for a renewal of the Air Express Agreement and of their collaboration in the provision of air express service to the public and foresees the probability that these negotiations will produce a consensual basis for preservation of air express service amenable to Board approval under Section 412. On March 29, 1974 the airlines in their concurrence with REA's motion expressed their opinion that a revision of the Air Express Agreement "looking toward a continuation of air express service" is a "possibility," and that the extension sought by REA is necessary to the exploration of this possibility.

National Small Shipments Traffic Conference represents 230 companies and 19 industrial associations throughout the United States interested particularly in the availability of transportation at a reasonable price for the movement of small shipments. Many of NSSTC's members are heavily committed to air transportation, not only for exotic articles and emergency situations, but also for bread-and-butter maintenance of inventory and distribution to market when the economics warrant. Under the sponsorship

of NSSTC 12 shipper league traffic managers presented testimony in this proceeding in exhibits numbered NED-100, -203, -204, -401, -402, -404, -405, -406, -410, -411, -412 and -413. This testimony is summed up and abstracted at pages 4-17 of NSSTC's brief to the examiner in this proceeding. At pages 3-4 of that brief conclusions warranted by that shipper testimony were stated to be:

> "(1) Air express service is important to the customer in that it is highly expedited, highly reliable, and available for an extraordinarily broad range of commodities including, for example, live creatures and dead eyes. (2) It is now being delivered to the public adequately by REA Express in conjunction with the airlines. (3) The witnesses know of no substitute for REA, that is, no firm or firms with the capacity which REA now has to combine ground facilities with air carriage in such a way as to continue air express service at its present standards. (4) These witnesses have no objection to selection by the Board of anyone other than REA to fulfill this ground service function so long as that person or firm is able to do the same job which REA now does. (5) By and large these witnesses have no objection to an extension or expansion of REA's air business into the air freight forwarding field so long as REA continues to fulfill its air express function. (6) It is difficult to see how the function of REA could be performed or replaced by the collective availability of a number of transportation firms, such as the air freight forwarders, each of whom would specialize in different markets, because the shipper witnesses feel that air express requires a national transportation system under single ground management."

In short, NSSTC's members have a vital interest in the preservation of air express service, they constitute a broad shipper spectrum and indicate that need for air express service is widespread among the shipping public. Unless REA's motion is granted air express service will terminate in some two months, and in the interim the airlines show no likelihood of devising and implementing an adequate substitute. On the

other hand, there is substantial indication that provision of another 240 days of room for REA and the airlines to negotiate will result in the renewal of a stable and rational basis for continuation of air express service.

WHEREFORE, National Small Shipments Traffic Conference, Intervenor, respectfully requests that the Board grant the motion of REA Express for extension of the June 5, 1974 termination date in Order 73-12-36 to January 31, 1975.

Respectfully submitted,

NATIONAL SMALL SHIPMENTS TRAFFIC CONFERENCE, Intervenor

By its attorney

W. Q. Keenan

William Q. Keenan
277 Park Avenue
New York, New York 10017

OF COUNSEL:

ARSHAM & KEENAN
277 Park Avenue
New York, New York 10017
(212) 759-1000

Dated: April 2, 1974

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing concurrence in the motion of REA Express, Inc. for extension upon all parties of record in this proceeding by properly addressed first class mail.

Done this 2nd day of April, 1974 in the City, County and State of New York.

W. Q. Keenan

William Q. Keenan

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 1st day of April, 1974

Authorization of inter-carrier DISCUSSIONS CONCERNING INDUSTRY-WIDE PRIORITY AIR CARGO SERVICE	:	Docket 26238

ORDER ON RECONSIDERATION

By Order 74-2-118 (February 27, 1974), the Board authorized discussions, subject to conditions, among the air carriers and foreign air carriers presently participating in air express service (hereinafter "the airlines"), concerning the creation of industry-wide priority air cargo service. 1/ The airlines have, in accordance with 14 C.F.R. 302.37, filed a petition for limited reconsideration of that order, alleging that harmful consequences would result from one of the conditions imposed on these discussions by the Board's order, and requesting that the conditions be modified to provide that the participating airlines may conduct their discussions without any observers present except for personnel of the Board. 2/ Answers to this petition for reconsideration have been filed by the Air Freight Forwarders Association (AFFA), REA Express, Inc., 3/ the Pet Industry Parties (PIP), 4/ and the National Air Transportation Conferences, Inc. 5/ These pleadings are summarized in the attached appendix.

1/ The request for such discussion authorization stemmed from the Board's decision in the Express Service Investigation, Docket 22388. See Order 73-12-36 (December 7, 1973), at pages 38-39, and 41, finding number 6. A petition for reconsideration of that decision is currently pending.

2/ The discussion conditions presently provide that representatives of the Board, any other governmental body, and any other interested person shall be permitted to attend the discussions as observers, and that the airlines shall formulate ground rules for the presentation of the views of such observers. See Order 74-2-118, ordering paragraph 1.

3/ REA views itself as an air carrier entitled to participate in the discussions. This was not our intent in the discussion authorization, as the airlines recognized in their petition, since the purpose of the discussions is to agree on inter-direct air carrier procedures for priority cargo handling. REA does not operate as a direct air carrier, and therefore does not have an interest in common with the discussants. REA instead is to be treated, for the purposes of these discussions, as a shipper, in common with the other indirect air carriers, and the conditions will be clarified accordingly.

4/ See Order 74-2-118, at page 2 note 5.

5/ Id., at note 6.

Upon consideration of the petition and answers, the Board has decided to reconsider Order 74-2-118 for the limited purpose of modifying the conditions attached to the authorization of these inter-carrier discussions. In all other respects, that order remains unchanged.

As we have previously stated, the subject of high-priority air cargo service is one of great importance. 6/ Since we indicated in Order 73-12-36 that the present exemption authority to conduct air express service will soon be terminated, 7/ it is desirable that an agreement on the procedures for interline coordination of priority cargo be reached as soon as possible.

We continue to recognize the important roles of air freight forwarders, air taxis, and other interested persons in the movement of priority air cargo service. 8/ These persons have experience in air cargo movement, and their businesses will be affected by the procedures agreed on by the airlines. Therefore, it will be useful for the airlines to hear the views of interested persons before or during each non-continuous meeting. 9/ It is also important for the Board to have the benefit of informed comments from these persons when the agreement is filed for approval.

As a rule, we would prefer to condition Board-authorized discussions on the admission of observers. Knowledgeable observers can make useful suggestions to the discussants, and they can obtain a better understanding of the reasons underlying the eventual agreement. This interaction often leads to the adoption of better and less controversial agreements and the filing of more informed comments with the Board; but we recognize that the price of this type of open discussion can be significant delay in arriving at agreements, and, in some cases, less frank discussion by the various airlines than would otherwise obtain.

6/ See note 1, above.
7/ Id., at page 40, finding number 3.
8/ See Order 74-2-118, at page 4.
9/ The discussion authorization order left it to the discussants--the airlines--to formulate the rules for oral comments by interested non-discussants. See Order 74-2-118, at page 4. We leave this unchanged.

In the case at hand, the Board has determined that the presence throughout the discussions of observers other than as indicated below is not necessary to protect the interests of shippers and air taxis,10/ and that such presence would unduly delay the successful conclusion of the discussions. 11/ The reasons for the delay are the possibility of very large numbers of observers and the other problems referred to by the airlines in their petition for reconsideration. 12/

The rights of the nondiscussants will not be harmed because the airlines will still be required to send to all interested persons agendas, minutes of the airlines' discussions, and so on, and the airlines will have to allow adequate time for oral presentations and the written presentation of suggestions and requests by interested persons before beginning their discussions, 13/ and permit formal oral presentations and written comments from interested persons of the start of each non-continuous meeting. This will enable interested persons to comment on

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10/ NATC suggests that its participation is required to effect interline procedures for priority freight between air taxis and certificated carriers. While we appreciate the benefits that could result from such a system, interjection of this broad issue at this stage of the proceeding would result in undue delay since the greatest immediate need is the formulation of interline procedures for priority freight between the airlines-petitioners. Only when this has been accomplished can attention be fruitfully turned to a priority system involving third-level carriers. Further, while we believe that the procedures detailed in the text fully protect the rights of NATC's members, we would be receptive to any request by the certificated carriers to include NATC as a participant if a showing is made that such participation would be conducive to the prompt and successful establishment of a priority air freight system.

11/ We reject the REA contention that the presence of a Board observer, without affording the same opportunity to the other parties in Docket 22388, would be prejudicial and improper.

12/ To date, the Board has received expressions of interest in attendance at the discussions by over 400 individual shippers. See the correspondence section of Docket 26238.

13/ All interested persons, including those who may not have yet filed documents in this docket or have expressed an interest, are to be given an opportunity to make oral presentations in a fair and orderly manner. The conditions will be clarified accordingly. Also, written recommendations, ideas, and requests of interested persons may be formally made to the discussants, and, of course, any person may informally express views to the airlines at any time.

the course the airlines are taking before a decision is reached on an agreement. In view of the fact that the minutes prepared by the airlines will be the only means for informing nondiscussants of the progress of the discussions up to the point of tentative agreement, we will require these minutes to be detailed and complete, including summaries of all points made in the discussions, without identification of the individual airlines' positions. Moreover, we have decided that once the airline discussants have reached tentative agreement on a plan, they should be required to schedule another open meeting at which the tentative plan will be explained and interested persons will have an opportunity to present their views, which the discussants will then consider before putting their agreement in final form. Finally, the agreement resulting from the discussions must be filed for prior Board approval, and when the airlines file their agreement we will require that they also present a detailed justification for each aspect of it, including reasons for the denial of the various material requests or suggestions made at the oral presentations or in writing by interested persons to the airlines.

As to the presence of observers from governmental bodies other than the Board, the presence of observers from the United States Departments of Transportation (DOT) and Justice (DOJ) will not delay the discussions and will be permitted.

ACCORDINGLY, IT IS ORDERED THAT:

1. Ordering paragraph "1" of Order 74-2-118 be and it hereby is modified to read as follows:

"1. The petition in this docket for authorization of inter-carrier discussions concerning the creation of industry-wide priority air cargo service be and it hereby is granted, subject to the following conditions:

(a) All direct air carriers and direct foreign air carriers presently participating in air express service shall be permitted to participate in each of these discussion meetings;

(b) These discussions shall not include the subjects of rate level, structure, or division; provided that they may consider types of commodities, if such consideration is limited to operational matters,

such as the interline handling of extraordinary items; and provided further that the discussions may consider the degree of priority; if any, which live animals should be given when shipped in any new priority service;

(c) These discussions shall take place in Washington, D.C., at a date, time, and place determined by the discussants;

(d) Representatives of the Board, DOT, and DOJ shall be permitted to attend each of these discussion meetings as observers;

(e) Notices, agendas, ground rules for the oral presentation by interested persons of views, suggestions, and requests to the discussants, and an address to which written comments for consideration by the discussants can be sent, pertaining to each noncontinuous meeting 14/ authorized herein shall be sent to (1) all carriers eligible to participate in these discussions, (2) the Board's Docket Section, (3) all persons who filed documents in this docket, and (4) all other persons who so request; such items to be filed with the Board and sent to the other persons enumerated not later than 7 calendar days before each meeting; provided, that the airlines shall provide for the consideration of oral and written presentations by interested persons before the start of, or during each noncontinuous meeting authorized herein; 15/ and after an oral presentation by the discussants of the tentative conclusions reached in their executive sessions;

(f) Complete and detailed minutes of these discussions shall be maintained by the participants, including a summary of each item discussed and the opinions expressed by the discussants on each point (but without identification of the person or airline making each point), and such minutes shall be filed with the Board's Docket Section, and sent to all other persons who so request, 16/ within 5 business days after the date of each meeting;

14/ By noncontinuous meeting, we mean a meeting beginning 5 or more business days since conclusion of the previous meeting.

15/ The discussants may, if necessary, limit the time available to those requesting an opportunity to make oral presentations, if that is done on a fair and equitable basis.

16/ The discussants are not precluded from setting a nominal charge to be paid for those requesting copies of the minutes; such charge should not exceed the cost of duplicating and sending such copies.

(g) Any agreement or agreements reached as a result of the discussions authorized herein shall be filed with the Board, pursuant to the requirements of section 412(a) of the Act (49 U.S.C. 1382) and Part 261 of the Board's Economic Regulations (14 C.F.R. 261) and Subpart P of the Board's Rules of Practice (14 C.F.R. 302.1601 through 302.1608), and shall not become effective unless and until approved by the Board pursuant to section 412(b) of the Act; provided, that the airlines filing the agreement shall accompany their application with a detailed justification for each aspect of it, including the reasons for the denial of material requests or suggestions made at the oral presentations or in writing by interested persons to the airlines; 17/

(h) The authorization granted herein shall expire after July 31, 1974; and

(i) The authorization granted herein may be extended, modified, or revoked at any time by the Board or by the Director of its Bureau of Operating Rights (action by the Director of the Bureau of Operating Rights to be subject to the procedures for review of staff action contained in Subpart C of 14 C.F.R. 385);" and

2. Except to the extent granted herein, all other outstanding requests in this docket be and they hereby are denied;

3. This order shall be served on all persons on whom Order 74-2-118 was served; and

This order shall be published in the Federal Register.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)

17/ Formal requests or suggestions of a similar nature can be grouped together and answered collectively.

ARGUMENTS PRESENTED IN THE PETITION FOR RECONSIDERATION AND ANSWERS THERETO

The Airlines

As a basis for their allegations, the airlines say that they have opted for the formal presentation of views of interested persons prior to commencement of the discussions. They feel, however, that upon completion of the presentations these persons should not be permitted to remain as observers during the airlines' discussions, since their presence would seriously inhibit open and frank consideration by the airlines of operating problems involving the traffic of these shippers. The airlines argue that since they compete for the traffic of these shippers, they would be extremely reluctant to raise operating problems with respect to their traffic with them present, for fear of incurring the ill-will of the shippers and resultant retaliation through withholding of traffic. They say that other airlines might attempt to curry the favor of the shippers by arguing or voting a certain way irrespective of the operating implications of such position. The airlines argue that the conditions attached to the discussion authorization afford ample protection to the shippers even if they are not present during the discussions.

With respect to air taxi operators and commuter air carriers, the airlines say they are willing to afford them the same opportunity to formally present their views as the shippers, but also do not want them present during the discussions. The airlines contend that the taxis and commuters do not have a direct interest in the formulation of interlining procedures between the certificated carriers. They say that industry-wide procedures for interlining freight between the certificated carriers have long existed, but there are no such industry-wide procedures between the non-certificated and certificated carriers, and that the problems of interlining ordinary air freight on an industry-wide basis should be solved before considering the problems of interlining priority cargo traffic.

The airlines do not object to the presence during the discussions of Board representatives. However, the airlines point out that no other governmental agency has requested to be present during these discussions, and they do not see the necessity for the presence of any but Board observers.

The airlines assert that the purpose of these discussions is to expeditiously resolve the problems involved in interlining priority cargo traffic, and that if they are given the opportunity to discuss the problems openly and frankly they can accomplish the desired results quickly. But, the airlines say, if they are restrained in their comments and presentations because of the presence of observers, the discussions may be frustrated and the interlining of priority cargo traffic may be unduly delayed.

AFFA

AFFA says that the airlines have not asserted a factual justification for secrecy. It also argues that forwarders choose airlines according to their service and not based on the regulatory views of particular airlines, and that these authorized discussions are not so emotionally charged as to generate the kind of airlines-shippers conflict claimed by the airlines. In addition, AFFA asserts that the subjects to be discussed by the airlines have already been disclosed to the shippers in formal Board proceedings, and therefore there are no operating secrets to be kept from the shippers.

REA

REA contends that it has an interest in seeing that the airlines' substitute for air express service is not inferior to the present service. It also says that the development of an adequate express service requires the participation of the shippers, and that the procedures suggested by the airlines, including the procedures for oral presentation of views, Board observers, and the filing of comments with the Board, will not adequately protect the shippers. REA also asserts that the airlines have not shown a need for secrecy in their discussions. Finally, REA says that the supplanting of air express should not be permitted unless the airlines can demonstrate overwhelming support for their proposed new service by the present air express customers.

PIP

PIP opposes what it says is the airlines' desire that only those shippers who have responded to date be permitted to make formal presentations and that after presentations shippers be excluded from the discussions. It says this might result in further lengthy hearings and the exclusion from the carriers' attention of the shippers' areas of concern or ideas. PIP further says that shippers should be able to provide supplemental statements, written or oral, after the start of the discussions but before a final agreement is reached. It says the agreement reached by the airlines will undoubtedly fail to explain its underlying rationale and considerations. PIP also argues that the fear of the airlines being inhibited in an open meeting is outweighed by the need to prevent undue airline pressure on each other. Finally, PIP says the presence of Board observers does not itself protect the public interest, and that any governmental agency should also be permitted to attend.

NATC

NATC says the airlines' reasons for the exclusion from the discussions of shippers is inapplicable to the question of NATC presence. It is sympathetic to the views of the airlines that the presence of shipper representatives might inhibit free and open discussion as to their traffic, but does not see the presence of air taxi representatives

having the same effect. It says that the limited form of nondiscussant presentation proposed would be of no avail to NATC, and that the minutes of the discussions, no matter how detailed, would not inform outsiders of everything that was considered at the discussions. NATC asserts that its members play a large role in air cargo transportation, and contrary to the airlines' contention, NATC says that the Airlines Air Taxi Interline Air Freight Traffic Agreement (Agreement CAB 21740) is, in effect, an industry-wide agreement for interlining freight between certificated and non-certificated carriers. In conclusion, NATC says that no adverse considerations warrant the exclusion of commuter air carriers from these discussions.

Order 74-5-23

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 6th day of May, 1974

INVESTIGATION OF AIR EXPRESS RATES	Docket 22387

ORDER

This investigation was instituted by Order 70-7-109, July 23, 1970, to determine the lawfulness of the air express rates and the divisions of such rates and charges as between REA and the direct air carriers. At the same time, in a companion order,1/ we instituted the Express Service Investigation, Docket 22388, to explore, among other things, the future role of express or priority cargo service in air transportation and whether the existing concept of an air express agreement between the direct air carriers and an express company should be maintained.

The Board has now, in Order 73-12-36, issued December 7, 1973, in the Service Investigation, authorized REA to operate as a domestic air freight forwarder, ordered the termination of REA's exemption authority to conduct air express service, and indicated that separate rates for expedited freight should be established 2/ independently by direct air carriers and air freight forwarders, rather than pursuant to agreements. In the light of that decision the instant Air Express Rates Investigation has been rendered moot in most respects. Because of the change in REA's mode of operation foreshadowed by our decision that it shall henceforth be an air freight forwarder rather than maintain its air express monopoly, no useful purpose would be served by our passing on the lawfulness of air express rates or attempting

1/ Order 70-7-110. That order also deferred action on an amendment of the air express agreement between REA and the airlines which provided, inter alia, for new divisions of rates.

2/ Subject, of course, to the normal rate procedures involving review and possible investigation and suspensions. The order also disapproved the agreements covering air express services, rates and divisions. Express operations will continue for a "wind-up" period through July 31, 1974. Order 74-5-25.

to resolve the disagreement between REA and the direct air carriers concerning the amounts to be paid over to the latter from revenues to be received under lawful prospective rates for express.

There remains, however, the question whether the Board should attempt to redistribute air express proceeds between the REA and the direct air carriers on a retrospective basis. This matter was within the scope of the hearing conducted by Administrative Law Judge Milton H. Shapiro, his Initial Decision, and our Order 72-7-15 undertaking review. Briefs have been filed and oral argument conducted, and the question was submitted for decision. However, as discussed more fully below, we are not satisfied with (1) the analyses made by the parties concerning the Board's power to order a retroactive adjustment of the revenue divisions heretofore made by REA and the airlines or (2) the state of the record on REA and airline costs and revenues, and we are uncertain at this time whether, under all the circumstances, it would be in the public interest for the Board to exercise its discretion (assuming our jurisdiction) and attempt to redistribute the air express revenues. We do know, however, that there are major gaps in the data necessary to an informed judgment as to what the just, reasonable and equitable divisions would be, and that we have serious doubts with respect to the jurisdiction question which were not resolved by the parties' presentations.

REA contends that it has been denied its fair share of air express revenues in the past and argues that the Board can and should require an adjustment of these revenues for the past period beginning April 9, 1970, the date of REA's Petition and Complaint seeking reformation of the agreement and relief with respect to the revenue allocation reflected in the existing agreement. 3/ Its argument is based on section 1002(h) of the Federal

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3/ See Orders 70-7-110, 70-8-48 and 71-2-68. The Board originally dismissed REA's pleading since the reform and relief requested were the subject of the broader ranging Express Service and Express Rates cases, but when the carrier raised the issue of the legal effect of dismissal prejudicing its positions with respect to the date of any retroactive action under section 1002(h) of the Act, we reinstated the Petition and Complaint for the limited purpose of preserving our legal option to grant relief retroactive to the April 9, 1970, filing date, and consolidated that limited reinstatement with the instant investigation. The Board also announced that it refrained from taking any position on its power to grant such relief or the need for the relief, stating that it intended only to preserve such legal option should the Board decide to exercise it under proper circumstances.

Aviation Act, which provides that when the Board prescribes just, reasonable, and equitable divisions of joint rates between the air carriers parties thereto it may require the adjustment of divisions between such air carriers from the date of the filing of a complaint or such later date as it finds just, reasonable and equitable. 4/ REA claims that, under a proper division formula, 5/ the airlines owe it over $1 million a month from April 9, 1970, forward, and that hence retroactive adjustment is needed to restore to REA its rightful entitlement.

At the threshold, the airlines have challenged the Board's jurisdiction to make retroactive adjustments of the divisions. They take the position that (1) while the Board can prescribe divisions prospectively through its power to condition approval of REA-airline agreements under section 412 of the Act, it cannot alter the agreements themselves 6/ and (2) the Board lacks the power to prescribe divisions of revenues between REA and the airlines pursuant to section 1002(h), since express rates are not "joint rates" between REA and the airlines. They assert that joint rates may exist only between connecting carriers operating through routes (i.e., airlines) and not between indirect air carriers and direct air carriers. The airlines state that REA does not operate "through routes" in air transportation, but only pick-up and delivery services, which are terminal services rather than line-haul or through route services.

4/ Section 1002(h) reads as follows:

"Whenever, after notice and hearing, upon complaint or upon its own initiative, the Board is of the opinion that the divisions of joint rates, fares, or charges for air transportation are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the air carriers or foreign air carriers parties thereto, the Board shall prescribe the just, reasonable, and equitable divisions thereof to be received by the several air carriers. The Board may require the adjustment of divisions between such air carriers from the date of filing the complaint or entry of order of investigation, or such other date subsequent thereto as the Board finds to be just, reasonable, and equitable."

5/ Under the formula proposed by REA, airline divisions from air express are to bear the same relationship to airline air express costs as airline freight revenues bear to airline freight costs and the airline costs are to be computed on the basis of by-product costing.

6/ The carriers argue that if the parties to an agreement do not accept a condition the Board can disapprove the agreement, but not re-write it. Withholding approval of an agreement because of a deficiency would not here serve to change the distribution of express revenues for past periods.

In his Initial Decision Judge Shapiro did not reach the jurisdictional question under section 1002(h). Contemplating divisions for the future, he determined, in the then existing circumstances, that jurisdiction is conferred by section 412. That section of the Act allows the Board to approve or disapprove agreements between REA and the airlines and has been the vehicle for Board control of REA-airline relationships, including the method of dividing revenues, since the inception of the air express service. In the Judge's view, although the power to prescribe rate levels does not coincide with the power to prescribe divisions, once the rate levels are prescribed according to the costs of the carriers for air express, the parties could proceed, as in the past, to negotiate an agreement with respect to divisions to reflect the prescribed rates, and the Board can offer the parties the choice of Board approval if they conform to the conditions relating to divisions, or of disapproval if they fail to accept them. As to the retroactive adjustment issue, Judge Shapiro held that the rates and divisions he found reasonable showed that rather than there having been an overpayment to the airlines by REA from the proceeds of the air express revenues, the airlines had been underpaid. He found that the evidence did not support REA's contention that it is entitled to reimbursement for overpayments to airlines under existing divisions; that the airlines had made no claim for retroactive payment or alterations of the divisions, because of their view that neither Section 412 nor section 1002(h) grants authority to make retroactive adjustments; and that in all the circumstances no such adjustment was required. Accordingly, he found that there was no need to require retroactive adjustments of the divisions as a condition of approval of any REA-airline agreement to be reached regarding air express rates. 7/

7/ In the light of the Board's decision in the Express Service Investigation, its power under section 412 to attach conditions to approval of the REA-airline agreement is no longer available as a means of prescribing divisions as a practical matter (absent consensus), since we are terminating the agreement in any event. Whatever the merits of conditioning approvals of agreements having future applicability on acceptance of prescriptions of divisions of revenues for past periods, the sanction of disapproval is lost where the agreement is not of a continuing nature, and we have no basis directly to reform an agreement between the parties. As Judge Shapiro correctly stated, under section 412 the Board is empowered to offer the parties a choice of approval if conditions are accepted or disapproval if they are refused, cf. McManus v. C.A.B., 286 F.2d 414 (2d Cir., 1961).

As the Board currently views the matter, a major difficulty with the conclusion of the Administrative Law Judge is that the existing record does not appear to contain sufficient factual information to permit us to conclude whether or not the existing revenue divisions, which could extend over a period as long as from April 1970 to 1974, are equitable. Although Judge Shapiro exercised a great deal of patience and persistence in attempting to determine the costs incurred by REA and the airlines, this task proved to be what he called "a prickly and elusive challenge." This was especially true so far as REA's financial results and operating statistics were concerned.

The problem stems in part from the fact that REA does not report on a recurrent (or even sporadic) basis any detail for its air express revenues, expenses and investment, nor such basic data as air express shipments, pieces and pounds, separately from such information for its surface express operations, much less on a more refined basis which would for example differentiate between system and domestic air express, or general commodity-rated and specific commodity-rated traffic.8/ Apparently, it also keeps its books on a system basis only, although air express is handled by a separate operating division of the company. Quite obviously, this history and practice of aggregate accounting and reporting both emphasizes the need for accurate allocations and makes the allocations more difficult to accomplish and to assess. When this deficiency was coupled with a fundamental revision of REA's system of accounts, effective July 1, 1970, the result was to render it extremely difficult, if not impossible, to compare data for this first half of 1970 with data for the second half of that year, or to reconcile the data for the two halves of the year with the carrier's report to the Interstate Commerce Commission for calendar 1970, much less to make dependable comparisons with earlier years or projections to later years. Yet, REA was insistent that 1970 was the only feasible base period, since it had made two cost studies during that year which it deemed crucial to its allocation of costs. REA further asserts that, because of a number of variable factors, the studies could not be applied to 1969 data to develop cost allocations for that prior period (which had been designed earlier as the base year), and that even the costs REA itself had developed for 1969 were merely the product of what it characterizes as a "meaningless mathematical exercise." In that posture, and because of "the quality of the evidence actually furnished at the hearing" (I.D. p. 12), the Judge determined, in effect, to accept 1970 as the base year. However, it must be noted that the variables which were asserted by REA to make its costing inapplicable to 1969 data would appear to make equally questionable the application of its methodology to later periods.

8/ The general commodity-rated traffic and the specific commodity-rated traffic are somewhat different in terms of volume, weight and prices per shipment, and weight per piece. See Initial Decision, Appendix J. The ALJ's costs were based on those for the general commodity-rated traffic, since marketing considerations would normally have a greater impact on the SCR's than on the GCR's.

Moreover, as indicated in the initial decision, the evidence presented at the hearing was not of the highest quality, to say the least. The exhibits were revised and recast on various occasions, not only to alter findings from the studies, but also to change fundamental statistics, such as number of shipments, and the result is a morass of seemingly conflicting figures. The problem is greatly aggravated by the absence of basic data for traffic and revenues subsequent to the hearing in this case. Judge Shapiro directed REA to furnish monthly reports of air express traffic data until the Board's final decision in this investigation. In July 1971 REA requested permission to be relieved of this requirement. The request was denied by the Judge, but nevertheless REA unilaterally discontinued submitting the reports. Whatever the other difficulties of determining the proper divisions for years subsequent to 1970, the continued absence of basic information needed to allocate costs would make the task impossible.

Within the limits of the data the Administrative Law Judge has made cost findings for 1969 and 1970 which satisfied him that the airlines, rather than REA, had been underpaid and that REA had not proven that it was entitled to reimbursement for overpaying the airlines under the divisions. REA has challenged these findings, alleging that the Initial Decision contained errors involving over $26 million of claimed costs denied to it and almost $36 million of airline costs mistakenly allowed. While a preliminary review indicates that at least $22 million of claimed errors respecting REA costs are unsubstantiated.

9/ REA has claimed "inflation" of $14.5 million but, quite apart from the fact that this item has no bearing on 1970 costs, the record support will not bear scrutiny. The primary bases for the claim are (1) its two forecast 15% payroll increases, predicated on asserted increases in that amount in the railroad industry, plus (2) a projection for economic inflation, footed on an overall forecast in the Survey of Current Business. But REA stated on brief to the Board that it had not paid its union employees increased wages since June 1970 and a national forecast is too speculative a basis to apply to the costs of any particular company. Further, there is no reason to believe that REA experienced inflation any more severe than the airlines with whom the air express revenues are to be divided.

The second major "error" asserted was the disallowance of $7 million in return and taxes. However, this figure rests on the theory that a particular amount of money--here $3.5 million--is required to attract capital. Neither the theory nor the amount is adequately supported. As a means of reaching the sum in question, REA applied a claimed 15% capital to a constructed investment which would produce the result. This is a totally unacceptable approach. We will not inflate investment to make up for losses incurred prior to the institution of this investigation, nor attempt to provide a return on investment covering the cost of capital for REA's entire system, nor provide capital directly, as opposed to a return element affording the means for attracting capital--and the return element is not intended to make up for operating inefficiencies, failure to adjust costs to revenue, or lack of receptivity to service needs and customer requirements. See Tr. 515-517.

(Continued)

and that most, if not all of REA's theories pertaining to the airlines' express costs are invalid,10/ the Board is unwilling to undertake an in-depth review of REA's contentions with respect to 1970 in the absence of, at the least, more data for the remaining years which would be involved, and prior to resolving

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(Continued)

9/ The remaining items are questionable. REA's posture on these rest on such factors as allocations based on unsupported judgment which are inconsistent with statements in tariff justifications on file with the Board; retroactive revisions of accounting for bad debts; insurance allocation ratios twice as high in one period as in another; and a mistaken view of the impact of a shipment count on the costs for general commodity-rated traffic. Problems of evidentiary support also inhere in the allocations of "other revenue" and accounting for value charges, C.O.D. fees, and other accessorial charges.

10/ The first error ($3.74 million) attributed by REA to the initial decision was the use of a joint product rather than a by-product basis for allocating airline-costs as required by our decision in the Domestic Passenger-Fare Investigation, Docket 21866-7. But the ALJ did not misread our decision as asserted by REA. In contrast to our tentative view with respect to freight rates, we stated that we had no reason to believe that mail and express rates could not cover a fully allocated share of capacity and noncapacity costs. Our view has not been altered by the record in the instant investigation, which strongly suggests that REA's past problems with contracting shipment volumes were attributable to a reputation for poor service rather than to its prices. These prices remained advantageous competitively vis-a-vis air freight in the short-haul markets where the vast bulk of REA's traffic is carried. The repeated post-hearing filings for rate increases by REA are not inconsistent with a belief that express traffic is relatively price-inelastic. Moreover, for division purposes, costs should not be altered by price elasticity considerations: divisions should be cost-based, and where the respective percentage shares of revenues are fixed in proportion to respective costs, inability to price at cost is irrelevant.

Second, the theory that the airlines' share of express revenues should have the same relationship to their express costs (based on by-product "costing") as their freight rates bear to freight costs was properly rejected by the ALJ. If it is true that the airlines cannot recover full costs from their freight operations (a question still to be determined in the Domestic Air Freight Rate Investigation, Docket 22859), it still does not follow that they should therefore lose money on express or should therefore be awarded a low share (assertedly $3.79 million less) of express revenues.

(Continued)

our heretofore stated reservations concerning jurisdiction.11/

In this posture the Board deems it appropriate to request the interested

10/ (Continued)

The next alleged error, labeled "priority and density," actually involves the theory and mechanics of capacity cost allocations: that is, the so-called weight versus space dispute, as well as the weighting factors used. REA states that over $14 million is at stake, but does not segregate the elements involved. Our tentative view is that the ALJ correctly used the space basis of allocation. That method requires the use of relative density as a conversion factor, and the ALJ properly preferred on-board density over dock-side density. He also properly followed precedent by using a priority weighting to allocate costs, since some costs are incurred because of reserving capacity in recognition of the priority agreement and the priority does result in some preference to express on some flights. Cf. Nonpriority Mail Rate Case, Order 70-4-9. However, we do not here pass on the validity of the priority weighting chosen. On the other hand, although REA made no evidentiary showing as to the proper cargo load factor standard and failed to address itself to a passenger load-factor standard, it would appear that airline capacity costs are overstated for at least part of the division period if passenger load-factor standards developed in the Passenger-Fare Case are not applied.

Finally, REA makes a broadside attack on the ALJ's noncapacity costs, asserting a $14.3 million error. The difficulty with REA's presentation is that it relies very heavily on an unsubstantiated judgment that the airlines' cost of handling express traffic is one-sixth that of handling freight. The record shows that at many airports the airlines perform all handling functions, and that even where REA does play a significant role, there are countervailing influences such as the size of express pieces and the expense of runners.

As in the case of REA's costs, we shall not here explore the contentions of the parties with respect to airline express costs. We do note, however, two apparent problem areas: (1) the initial decision disallowed all reservations and sales expense, but some costs in this function do appear to be entailed, as the ALJ appears to have recognized, and (2) a straight-line approach to capacity cost allocations ignores the problem of taper in the short distances common for express shipments.

11/ Similarly, it would be inadvisable at this time to review the countervailing contentions of the airlines which claim REA's costs were overstated and their own costs understated by the ALJ; those of Bureau Counsel, who claims that both airline and REA costs were overstated by the ALJ; or those of the Air Freight Forwarder Association which urges that the ALJ has understated the costs and hence the rates for this competing service. Indeed, as stated above, the airlines have urged that we lack jurisdiction to revisit the past period divisions; and the freight forwarders have at most an extremely attenuated interest in a controversy limited to divisions.

parties to meet in an informal conference, with a view to reaching agreement with respect to such matters as the detailed air express traffic and revenue data for calendar years 1971, 1972, and 1973; methods of evaluating the divisions made under the formula outstanding during the period April 1970 forward; and, if possible, an overall conclusion on the appropriate divisions for the period. REA and the airlines collectively are requested to specify the amounts they respectively received under the air express rate levels in effect, during the periods April 9 - December 31, 1970, calendar year 1971, calendar year 1972, and calendar year 1973, bearing in mind not only the several rate increases but special payments or credits 12/ and deficiencies. 13/ We are hopeful that, with a full understanding of the difficulties, the conferees will be constrained to resolve their own differences and present a stipulation to the Board. If, however, a consensus cannot be reached, then the parties are requested to file briefs with the Board. These briefs are to be addressed to (1) whether the Board has jurisdiction over retroactive adjustments of the divisions of air express revenues, (2) whether assuming jurisdiction, the Board should exercise its discretion to require such adjustments, 14/ (3) whether further procedures are necessary, short of final decision by the Board, and (4) what divisions should be established and the basis therefor.

ACCORDINGLY, IT IS ORDERED THAT:

1. An informal conference shall be convened within thirty day from the date of this order, to be presided over by the Director, Bureau of Economics, for the purpose of assembling factual material and attempting to reach agreement on the divisions of revenues pursuant to operations conducted under Agreements CAB 12866 and CAB 17935, as amended, as discussed above;

2. At the termination of the conference by its chairman, he shall forthwith file with the Board a report, accompanied by such stipulations as have been agreed upon by parties to the above-cited CAB Agreements; and

3. If the parties to the above-cited CAB Agreements have not agreed upon a stipulation of the divisions of revenues prior to the termination of the conference, they may file with the Board within fifteen days of such termination date, briefs addressed to the issues as described above.

By the Civil Aeronautics Board:

(SEAL)

EDWIN Z. HOLLAND
Secretary

12/ E.g., $1.5 million in 1970 and again in 1971 was credited and paid to REA notwithstanding other provisions of the division agreement.
13/ It is our understanding that REA may have deferred payment of some $7 million to the airlines as of the end of 1973.
14/ In this connection the parties should address themselves to (a) whether REA has the burden of proof to establish that the divisions under investigation are unlawful and (b) assuming that the answer to the foregoing is in the affirmative, whether the investigation should be terminated without further proceedings on the ground that REA has not sustained its burden.

Order 74-5-24

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 6th day of May, 1974

INVESTIGATION OF AIR EXPRESS RATES	Docket 22387
DOMESTIC AIR FREIGHT RATE INVESTIGATION	Docket 22859

O R D E R

By motions filed January 31, 1974 REA Express, Inc. (REA) seeks the consolidation of the Investigation of Air Express Rates, Docket 22387, into the Domestic Air Freight Rate Investigation, Docket 22859. 1/ The motion to consolidate alleges inter alia, (1) that the allocation of airline costs by the Bureau of Economics in the Freight Rate case is inconsistent with its earlier exhibits in the Express Rates case and indicates greater profit on air express than that reflected in the earlier exhibits; (2) that Air Express is now a larger percentage of total REA volume than it was at the time of the Express Rates hearing, and accordingly the cost allocation found by the ALJ in that case must be changed; (3) that as of November 1971, REA established new service standards for air express increasing the expense allocable to that service; and (4) that there have been substantially inflationary cost increases since the hearing in the Express Rates case. In view of the foregoing, REA urges that the record

1/ The motion to consolidate, which is untimely under rule 12(b), is accompanied by a motion for leave to file the document alleging good cause for failure to file timely. The motion for leave to file is granted.

requires updating, and that this be accomplished by consolidating the Express Rates case with the Freight Rate investigation. 2/

The motion is opposed by Trans World Airlines and Flying Tiger Lines.

For the reasons set forth below, we find that consolidation would serve no useful purpose, and that the motion should be denied.

The Express Rates Investigation was instituted by the Board in 1970 3/ for the purpose of considering the lawfulness of air express rates and the division of such rates as between REA and the direct air carriers. As discussed in Order 74-5-23, issued contemporaneously herewith, the issue of express rates charged to the public as well as the issue of the prospective divisions of such rates has, for all practical purposes, been rendered moot by the Board's decision to terminate REA's air express authority. 4/ The only issue remaining in the Express Rates case is that related to the possible determination of retroactive divisions for the period beginning April 9, 1970. The Board recognizes that the record in the Express Rates case is inadequate with respect to this issue and has established a conference procedure in an effort to attain a resolution of the matter involved if possible and, absent such resolution, directed the submission of further briefs to the Board on the question of the Board's jurisdiction, whether it should exercise such jurisdiction here, whether further procedures are necessary, etc.

Under the circumstances, the Board believes that the foregoing procedure is clearly to be preferred to consolidation of the issue of retroactive divisions into the Freight Rate case. Consolidation would substantially broaden the scope of that already extremely complex proceeding which is concerned with the level and structure of air freight rates, and looks solely toward the making of determinations by the Board for future applicability only. On the

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2/ Other grounds asserted in support of consolidation are noted infra.
3/ Order 70-7-109, July 23, 1970.
4/ Orders 73-12-36, December 7, 1973 and 74-5-25, May 6, 1974. . We note REA's argument that consolidation of the Express and Freight cases would permit a comparison of express service with the cost of the substitute priority service which the Board held, in the Service Investigation, should be instituted by the airlines. However, the nature of the priority service has yet to be formulated and the rates for such services are not within the purview of the Freight Rate Investigation, the evidentiary hearing which commenced on February 5, 1974. Moreover, any further consideration of comparative cost of service has become an academic question in light of the Board's decision to terminate REA air express authority.

other hand, the issue of divisions affects, for all practical purposes, only the past period, 5/ and moreover, does not directly involve the issue of freight rates. It is difficult to perceive how consolidation of the divisions question would do more than complicate and delay the resolution of the issues in both proceedings.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. REA's motion for leave to file an untimely motion to consolidate be and it hereby is granted; and

2. REA's motion to consolidate be and it hereby is denied.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)

5/ While express operations will continue for a "wind-up" period through July 31, 1974, it is obvious that the Freight Rate case will not have been finally decided until after that date.

Order 74-5-25

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.,
on the 6th day of May, 1974

EXPRESS SERVICE INVESTIGATION	:	Docket 22388

SUPPLEMENTAL OPINION AND ORDER

BY THE BOARD:

In Order 73-12-36 the Board determined to (1) disapprove the agreements among the airlines inter se and between the airlines and REA providing for air express service; (2) terminate REA's exemption authority to act as the exclusive indirect carrier for air express; and (3) award REA nationwide air freight forwarder authority and give REA six months to make the switch from air express to air freight forwarder service. The Board also found that the scheduled air carriers were under an obligation to offer highly expedited air freight service.

REA is the only party to seek reconsideration of Order 73-12-36. REA's petition for reconsideration is supported by the National Small Shipments Traffic Conference, 1/ and opposed by all of the airlines that are parties to the air express agreements, the Air Freight Forwarders Association ("AFFA"), and Emery Air Freight.

1/ We will grant the NSSTC's motion for permission to file its reply late.

REA has also filed a "motion for extension" that "requests the Board to permit air express to continue until January 31, 1975, so that the express partners may be afforded additional time for negotiations looking towards continuation of the air express system." Twenty-four of the 28 airlines participating in the air express system support REA's motion, [2/] as does the National Small Shipments Traffic Conference. United Air Lines, AFFA and Emery oppose it. [3/]

The Board has determined to deny REA's petition for reconsideration and motion for extension. However, for reasons explained hereafter we shall delay the implementation of our decision to terminate the air express arrangement until August 1, 1974.

REA's Pleadings

REA's petition for reconsideration and motion for extension overlap in many respects. Neither takes issue with the Board's decision to grant REA domestic airfreight forwarder authority (REA in fact has long sought such authority) nor in terms seeks reconsideration of our decision to end air express. Rather, both purport to urge no more than that the termination date of air express be extended, with the petition for reconsideration also asking that REA be given additional authority in the interim period. In point of fact, however, REA's petition for reconsideration, and to a lesser extent, REA's motion for extension, contend that Order 73-12-36 is in error in a host of respects.

2/ The four airlines that did not join in that answer are Delta, North Central, Southern, and United.

3/ REA's motion for extension and the various answers in support of, or in opposition to, the motion are accompanied by motions for leave to file otherwise unauthorized documents. The motions for leave to file otherwise unauthorized documents shall be granted, except for the motion filed on April 16 by the Brotherhood of Railway and Airline Clerks (See, infra, n. 22).

Taken together, REA's two pleadings present three basic contentions:

First, that the record shows that air express will continue to be a viable arrangement given appropriate action by the Board, and that the continuation of air express would be in the public interest.

Second, that circumstances arising since the close of the record in this proceeding further evidence air express's continued viability and its importance to the public.

Third, that even if the Board persists in its determination to end air express service (and REA's position as the exclusive ground agent for air express), the termination date should be extended by at least 18 months, and perhaps considerably longer, and REA should be accorded dual air express-air freight forwarder authority in the interim.

Each of those three arguments refers to the claimed importance of air express's priority rights to air cargo space, to REA's broad geographic and commodity coverage, and to action the Board should take to enable REA and the air express system to return to financial health. It is to those issues that we now turn.

Priority Service

By joint agreement between all U. S. certificated route carriers and REA, REA is the only indirect air carrier that is accorded priority treatment 4/. We found that notwithstanding this arrangement, air express generally is not faster than air freight forwarder service and is often slower; that the priority rights of air express service only rarely have any effect; and that to the extent that extra-quick transportation and priority rights are useful to shippers,

4/ The agreement provides, however, that the airlines are required to give priority only to a "normal" amount of air express traffic.

they can best be provided by airline tariffs so providing, without being tied, as they are now, to door-to-door air express service offered solely through REA. REA not surprisingly disagrees. REA claims that the priority service that air express offers is important to shippers, and that it is necessary to set back the termination date of air express at least 18 months, and perhaps indefinitely, in order to assure that shippers continue to have priority service available.[5/] In part REA's claims in this respect are based on views previously heard, considered and addressed by the Board. And while REA also raises arguments not advanced earlier, none merit reconsideration of Order 73-12-36.

REA argues that Order 73-12-36 is inconsistent because the Order finds little value in air express's priority feature but at the same time determines that airlines are under an obligation to offer highly expedited air freight service. We perceive no inconsistency. The record shows that a priority air cargo system that enabled a shipper to purchase extra-quick service would be valuable to some shippers (albeit a relatively small number). We accordingly found that airlines are under an obligation to file tariffs providing for such service.

That is not inconsistent with our finding regarding the significant value of the priority rights of air express for the reason that even with such priority rights, air express is not particularly fast. Air express -- with its priority rights -- is generally able to deliver a shipment no faster than a forwarder can using non-priority air freight services.[6/] The new service contemplated

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5/ REA also argues, at least implicitly, that because of the importance of air express's priority service, air express should not be ended at all.

6/ REA claims one of the air express rules by which the airlines jointly divide up the air express business is a cause of this paradox. REA's point, apparently, is that we should have approved the continuation of air express, while conditioning our approval on the elimination of that rule. We discuss this general consideration infra, p. 13.

in the Order, on the other hand, will assure truly fast deliveries, in large part because it will be a system that will benefit from the competitive efforts both of the direct air carriers and of the many forwarders who have made it their business to achieve the fastest deliveries that direct air carrier operations permit.

REA next argues that recent circumstances -- specifically the ongoing fuel shortage -- require that air express service be continued at least for the duration of that shortage. REA's theory apparently is that capacity reductions stemming from the shortage have already and will continue to substantially increase the likelihood that any given air freight shipment will be delayed by reason of insufficient cargo space. Air express shipments will not be delayed, the theory goes, because of air express's priority rights. Thus shippers who need prompt deliveries will benefit by extending air express's life for the duration of the shortage. REA offers no factual support for its position, however, and reports on file with the Board fail to establish a dearth of cargo capacity stemming from the fuel shortage. 7/

7/ Thus in 100 of REA's top markets (see REA Ex-209) air cargo load factors -- that is, percent of available air cargo space filled by air express, air freight, and mail -- during the three-month period November and December 1973, and January 1974, averaged about 37%, up only about five points from the same period last year. These figures are compiled from service segment data reported to the Board by the airlines. (January 1974 data are the last currently available.)

Moreover, if it be assumed that the fuel shortage will ultimately result in cargo demand outstripping cargo capacity, the appropriate course is not to attempt to prolong REA's monopoly over priority rights to cargo space. Rather, it is to ensure that the airlines offer priority service to all. For if limitations on airline capacity stemming from the fuel shortage were in the months or years ahead ultimately to make it difficult to obtain cargo space, it would plainly be contrary to the public interest to perpetuate the present arrangement, in which those shippers unable to accept the delays inherent in such circumstances would have to deal with REA because of REA's exclusive right to priority treatment.

Geographic Coverage

REA argues that air freight forwarders will not be able to match the geographic coverage now provided by air express 8/ REA also claims that even if the Board remains of the view that the forwarders have the wherewithal to expand their coverage, termination of air express should nevertheless be delayed in order to determine if the air freight forwarders will in fact expand the geographic scope of their operations sufficiently, and in order to give the forwarders the time to effectuate the changes in their operations that such expansion requires.

Upon consideration of the pleadings, the Board has determined that no error has been shown in the findings and conclusions made in Order 73-12-36 concerning the geographic coverage of air express and the forwarders' abilities and intentions.

8/ We note, however, that REA's authorization as an indirect carrier is not being ended, but rather being changed from air express ground agent to air freight forwarder.

We note, at the outset that, as discussed in Order 73-12-36, REA's historic broad geographic coverage is a relic of the past, and that even if air express were to continue, the future would inevitably bring retrenchment in its scope of operations. No pleadings dispute these findings, and no party, including REA, has pointed us to new circumstances that would call these findings into question.[9/]

In any event, and apart from the foregoing considerations, deferral of the date at which our authorization of air express ends would almost surely serve merely to delay still further the geographic expansion of air freight forwarder service. Our understanding of air freight forwarder economics convinces us that the forwarders are unlikely to take the risks inherent in substantially expanding the geographic scope of their operations as long as air express is in operation.

9/ REA suggests that the withdrawal of Santa Fe Airfreight and Domestic Air Express from air freight forwarding undercuts the Board's conclusion that the forwarder industry will be able to fill voids created by the withdrawal of REA from many markets. However, neither forwarder played a large or crucial role in the nation's air freight system, and we do not consider their departure material to this case. Moreover, air freight forwarders with nationwide systems, such as Emery, remain willing and able to fill such service voids, and we note that eleven long-haul motor carriers (many of which are nationwide companies) have recently filed for renewal of their air freight forwarder authority.

The combination of thin markets (essentially all markets in which relatively large amounts of air cargo move are already served by forwarders), established REA customers, and the substantial level of nonline-haul services performed for REA by the airlines at most of the country's airports,[10/] present market entry difficulties that could too easily dissuade forwarders from untertaking the necessary investments.

As we said in Order 73-12-36, irrespective of the action which the Board takes here some uncertainties are inevitable in the days ahead for air cargo service to small communities. But we remain of the view that the effectuation of Order 73-12-36 will redound to the benefit of the country's small communities as well as to the nation as a whole.[11/] It should also be pointed that REA, as an air freight forwarder, will be able to offer priority handling at all of its present outlets. However, REA will no longer be the <u>exclusive</u> agent for priority cargo handling.

10/ The airlines perform all ground services (receiving and delivery of over-the-counter shipments, routing of shipments, etc.) for air express shipments at about 85% of the nation's airports: See Order 73-12-36, at 24.

11/ Similar considerations apply in respect to commodity coverage. In fact, the record is even clearer that the airlines and the forwarders will be fully able and willing to efficiently handle all of the commodities that now move on air express. REA claims that transporting some kinds of cargo presents difficult operational problems, referring particularly to the transport of live animals at a time when capacity has been cut because of the fuel shortage. But REA adds nothing beyond that already considered by the Board in Order 73-12-36 and above at p. 5 with the exception of a reference to a finding of a Congressional Committee (as reported in a newspaper article) that the Board and other agencies should "monitor" domestic animal shipments. The Congressional document cited indirectly by REA is a report of the House Committee on Government Operations, House Rept. No. 93-746, "Problems in Air Shipment of Domestic Animals," 93rd Cong., 1st Sess. (1973). As indicated, REA refers to the report as supporting its claim that air express should be continued in order to assure proper treatment of live animals being transported by air. In fact, however, the Report states that animals shipped by air express apparently often fare worse than animals shipped via air freight, that there are delays in the shipment of animals moving by air express, and that it appears that "REA in many instances is not equipped to handle animal shipments." Moreover, the Report specifically proposes that <u>REA's</u> handling of animal traffic "be monitored": Report at pp. 9-11, 18.

Relative rate levels of air express and airfreight

REA claims that a decision in the Rates case 12/ is needed to provide a comparison between air express rates and the rates offered by alternative services, and that the Board cannot reasonably take action ordering the end of air express until the conclusion of the Rates case.

The Board does not share REA's views. To begin with, as discussed in our opinion in the Rates case, the question of lawful express rates for the future is now moot by reason of the Board's decision in this proceeding to terminate the air express arrangement, and, accordingly, has not been considered in the Rates proceeding by the Board.13/

Moreover, relatively low express rates, standing alone, cannot be the basis for perpetuating the air express system (even assuming that it could in fact be perpetuated). The Board recognizes that in many instances air express rates for small-package, short-haul shipments are less than air

12/ Investigation of Air Express Rates, Docket 22387.

13/ We note that in any event it is evident that the record in the Rates case could not provide a meaningful comparison between express and other freight rates. For, as Order 74-5-23 establishes, the record in that proceeding is woefully deficient, and, largely because of REA's failure to comply with evidence requests, does not contain basic information needed for the comparison that REA now insists upon. In this connection, AFFA, in its answer to REA's petition, argues that the Rates case should be abandoned because the record is stale. REA has moved for leave to file an otherwise unauthorized reply to AFFA's argument, in which REA strongly opposes abandonment of the Rates case. The airlines have moved for leave to file an otherwise unauthorized answer in opposition to REA's reply. We shall grant the motions of REA and the airlines.

freight rates. However, as we stated in Order 73-12-36, this factor does not outweigh other important public interest considerations that point to the termination of the current air express arrangement.

We also note that in recent years air express rates have been substantially increased a number of times. 14/ One result of these increases is that in many instances it is now less expensive to ship even the smallest package on an airport-to-airport basis via the airfreight services of the airlines, and in some instances, the forwarders. (More than 20% of all express shipments were airport-to-airport shipments.)15/

Finally, we cannot accept REA's argument that the Board should wait and see what rates the airlines and forwarders will publish for priority service before terminating air express. First, as previously discussed, REA's relatively low rates are not sufficient reason, in and of themselves, for perpetuating the air express system. Second, even apart from the Board's power to control rates, there is no basis for REA's suggestion that the rates for the new priority service will be unreasonably high. In fact, as noted in Order 73-12-36, it is the Board's view that competition for priority shipments among the direct air carriers and all indirect air carriers, including REA, will result in an optimum balance of price and service. Third, and as also previously discussed, an extension of the life of the air express arrangement would hamper the institution of the new, and what we believe to be, superior, priority service.

14/ In the past few years alone there have been numerous and substantial increases in air express rates. In fact, since January 1, 1974, REA has increased its general commodity rates by 10% and certain special commodity rates (and related minimum charges) far more than 10%. The total additional revenue derived from these rate increases has accrued almost exclusively to REA, and not to its express partner, the airlines.

15/ Air express service has always been a door-to-door service under a single rate which includes pickup and delivery service. Air express customers preferring to ship on an airport-to-airport basis (to avoid the delays inherent in pickup and delivery services, for instance) must nonetheless pay the full rate.

Air Express's Viability

As detailed in Part V of Order 73-12-36: (1) air express is a joint arrangement that hinges on the maintenance of an agreement between two parties (REA, on the one hand, and, on the other, the airlines as a group) whose interests have long been divergent and are becoming ever more so, with the result that air express service remains in chronic danger of being interrupted or ended; (2) while the Board has sufficient authority to compel the airlines to provide line-haul services for REA under an arrangement that would resemble the present air express system in certain respects, the Board could not insure that the airlines would continue to perform ground services on behalf of REA that are an integral and important part of the air express arrangement; (3) REA, upon which the air express system depends, is in serious financial trouble which could only be alleviated, if at all, by a substantial increase in air express traffic volume; and (4) the kind of traffic volume increase REA needs could only occur if REA were granted expanded authority, but that such authority would have a detrimental impact on the public interest and, in any case, would not work.

As we understand the thrust of REA's two pleadings insofar as they deal with this aspect of Order 73-12-36, REA is arguing that the Board could and should have taken steps to increase the chance of air express's continued viability by imposing various requirements, all beneficial to REA, on the airlines; that, as a result of current developments, there is a greater chance that REA and the airlines can work out their differences if given an extra eight months to do so; and that since determinations to be made in the Rates case will substantially affect REA's continued viability, it would be error on our part not to delay termination of air express until a final order issues in the Rates case.

We turn first to REA's argument that the Board's earlier approval of the air express agreements created "block bargaining power" on the part of the airlines; that the airlines -- utilizing that power -- have discriminated against REA; that the Board should have acted to prevent that discriminatory treatment; that if the Board had in fact done so it would have gone far toward returning REA and the air express toward viability; and that by not doing so the Board has acted contrary to antitrust policy.

We cannot conclude that REA's claims in this respect require reconsideration of Order 73-12-36. The air express agreements are plainly anticompetitive, and have the effect of eliminating competition between airlines and excluding airfreight forwarders from various types of markets. 16/ As we have elsewhere discussed, the air express agreements do not produce counter-balancing public benefits, but rather stand in the way of the establishment of an improved air cargo system. REA nonetheless argues that notwithstanding the foregoing, Order 73-12-36 runs afoul of the antitrust laws by failing to order the continuation

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16/ REA takes issue with the Board's characterization of air express as a monopoly. In our view, however, REA's arguments do not warrant our reconsidering our position in this respect. First, as touched on above, REA's unique arrangement with the airlines goes far toward assuring that air freight forwarders will be precluded from serving the country's smaller air cargo markets. Second, as we also touched on earlier, of the many indirect air carriers only REA (as air express's sole ground agent) has a claim to priority treatment by the airlines. The fact that this exclusive right (granted by all of the certificated route carriers acting jointly) does not seriously limit the air freight forwarders' ability to compete with air express shows only that an intended monopoly service has for various reasons not worked that way in practice. Even here, however, there is little doubt that some shippers distinguish between REA and other kinds of air freight service -- however mistakenly -- on ground that air express has priority claim to cargo space. Moreover, REA's exclusive claim to priority service could become a matter of real significance if the fuel shortage were ultimately to result in cargo load factors climbing to high levels. Further, the existence of air express tends to prevent the institution by airlines of highly expedited service readily useable by air freight forwarders.

of the arrangement, and that as part of its "supervisory responsibility" the Board has to permit the air express arrangement to continue while taking steps to protect one of the willing participants to the agreement from its partners.17/ We cannot concur. Disapproval of the air express agreements is fully in keeping with the spirit of the antitrust laws. It is the perpetuation of them that would have been contrary to that spirit. And we are not aware of any supervisory responsibility imposed on us that requires us to attempt to aid an unhappy partner to an arrangement that has outlived its time.

Moreover, our power to require the airlines to treat REA in any specified manner is in many respects limited. Thus the Board can not force any party to enter into a contractual relationship. In this regard, as discussed earlier, it is unlikely that the airlines and REA would be able to work out an arrangement continuing air express even if the arrangement were approved by the Board as is. Imposing the kinds of new conditions urged by REA would almost surely preclude continuation of air express by reason of the unwillingness of the airlines to become parties to an agreement so conditioned.

It is true that the Board probably could license REA to operate independently of an airline-REA agreement, and could compel the airlines to

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17/ REA argues that the Board's decision to deny it independent tariff authority is inconsistent with views expressed by the Board in the Air Freight Forwarder Case, 9 CAB 473, 486 (1948). In that case the Board noted that a dispute between the airlines and REA could be eliminated if they agreed to participate in a system whereby REA would publish an express tariff based upon charges imposed on REA by the airlines for their services to REA. The Board's views therein are not inconsistent with its decision in this proceeding. First, the Air Freight Forwarder Case supports the airlines' position which, as noted by the Board in Order 73-12-36, is that the airlines should be permitted to charge REA enough to cover their full costs. Second, Order 73-12-36 agrees with the Board's earlier conclusion that the Board does have the authority to permit REA to file its own tariff based upon rates charged REA by the airlines. However, the Board concluded in this proceeding that under existing

(Continued)

publish an air express tariff covering rates to REA. But as Order 73-12-36 points out, we are unaware of any authority by which we could require the airlines to continue to provide the many ground services that they presently perform on behalf of REA at so many of the nation's airports. REA points us to none and indeed does not dispute the concerns expressed on this point in Order 73-12-36.

REA's claims (in its motion for extension) that the June termination date for air express ordered by Order 73-12-36 ought to be extended eight months in order to permit the airlines and REA to work out their differences and arrive at a new agreement. REA bases its request on, among other things, newly instituted negotiations between REA and the airlines, that, according to REA, show signs of possibly bearing fruit.

We cannot agree to this request for postponement. In the first place, the decision to end the air express arrangement was by no means predicated on the inability of the airlines and REA to come to an agreement. Our point was that any agreement between the two sides would necessarily be unstable due to the parties' divergent interests. Moreover, even that was but one of several concerns that led the Board to conclude that the air express agreements should be ordered ended.

17/ (Continued) circumstances a grant of the tariff authority REA seeks would not in fact serve to perpetuate the air express system in its present form. REA also has argued during the course of this case that, as an alternative to the beforementioned complementary tariff system, it should be permitted rate freedom in the sense that it would publish the only express tariff and the airlines would receive a division of the rates REA would charge to the public. It is in this sense that the Board stated at page 27 of its Opinion that " . . . it is understandable that the airlines have refused to enter into an arrangement whereby the rates to be charged for such shipments would be within the control of another company (REA) whose interests and cost structure vary considerably from those of the airlines."

Second, there is no basis for concluding that there is any real chance that REA and the airlines will be able to work out the fundamental differences between them.[18] All of the airlines participating in the air express arrangement filed a pleading supporting Order 73-12-36, and opposing REA's petition for reconsideration. Thereafter, 24 of those airlines appeared to reverse course and supported REA's motion for extension. United, for one, argues that that change in direction by the 24 direct carriers is prompted more by the hope that an extension would result in their collecting a greater percentage of the amounts due them by REA than by matters more directly related to the public interest. We need not speculate on the motivations of those 24 carriers, however, since the fact of the matter is that four airlines did not join in that response to REA's motion, thereby adhering to the position they espoused in the airlines' opposition to REA's petition for reconsideration. In 1973, those four carriers--Delta, North Central, Southern, and United--accounted for 35 percent of all air express traffic. Of the 500 or so points in the United States receiving certificated air service, about 100 receive such service only from one or more of those four carriers.[18a]

In these circumstances, we can only conclude that the possibility of continuing the air express arrangement in anything like its present form--that is, a consensual arrangement providing broad geographic coverage--ha-

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18/ REA has so argued. See oral arg. tr. at 29-30.

18a/ Ft. Wayne, Ind. is served only by Delta and United; Meridian, M[illegible], by Delta and Southern; and Flint, Lansing, Muskegon, and Saginaw/Bay City/Midland, Mich., by North Central and United. Each of approximately 90 other points are served only by one of the four carriers.

not been shown to be any less free from doubt than it was at the time of issuance of Order 73-12-36, or that this state of affairs is likely to change for the better by January or thereafter.

REA's other argument in respect to continuing air express' viability appears to be that REA's financial problems--which have been a major source of weakness in the air express system--could be greatly ameliorated if the division of air express revenues between REA and the airlines were appropriately adjusted in REA's favor. REA points out that this question of divisions is at issue in the Rates case and that accordingly the Board cannot reasonably make any determination about the viability of air express until the conclusion of that case.

We cannot agree, however, that delaying action here to await the final outcome of the Rates case would serve any purpose, much less benefit the public interest. To begin with, and as discussed in our accompanying Rates opinion, the record in the Rates case does not now permit a determination of reasonable divisions, and it is not completely clear that it will ever do so despite our order there.[19/] Further, as discussed in Order 73-12-36 and concurred in by REA, in order for REA to attain financial health as the air express ground agent it would have to greatly increase its traffic volume. A change in divisions would not be enough[20/] to render air express viable unless it were accompanied by extensive changes in REA's authority that would be neither feasible nor in the public interest.

19/ Of course that case will in any event consider division questions only on a retrospective basis. Moreover, the authority of the Board to order divisions is itself contested.

20/ As noted earlier (at n.14 above), REA's share of each dollar of air express revenue has been steadily increasing. Yet the carrier's financial health remains unsatisfactory.

The Mechanics of the Changeover

REA claims that it needs more than six months to change from air express ground agent to air freight forwarder. It points to such matters as the need to instruct its employees in air freight rates and the need for specialized equipment, including containers, certain types of vehicles, and so forth. In our view, however, REA has utterly failed to show that the six months grace period granted to REA by Order 73-12-36 is insufficient. A prompt switch by REA from air express ground agent to air freight forwarder should present no undue difficulties. It is already an air freight forwarder in international markets. REA has long claimed it badly needs air freight forwarder authority, presumably on the basis of careful consideration by its management of how REA would conduct air freight forwarder operations. It has its many long standing customers. It appears that a very considerable portion of its buildings and equipment are suitable for air freight forwarder operations. And its management and employees are intimately familiar with the air cargo industry. Moreover REA provided no factual support that it needs more time.[21/]

For reasons expressed earlier herein and in Order 73-12-36, the nation's shippers will be better served when air express is ended. For that reason prompt termination is in order. REA claims that it will suffer badly

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21/ While its pleadings are replete with generalized allegations in this respect, we are provided with no specific data that could lead us to conclude that we should reconsider the determination in Order 73-12-36 that six months is sufficient time for the changeover.

if it has to switch to air freight forwarder status on June 5.22/ However, in our view, even if that were the case, there has been no showing that REA would be in a materially different position after a deferral than it is now.23/

In sum, the evidence is that a prompt termination of the air express system is in the public interest. However, the Board appreciates the complexity involved in setting up a new priority system for handling air freight. In this connection, we note that while the airlines have met for the purpose of establishing a priority system, they have not, as of this date, filed tariffs that would offer priority service by June 5, 1974. In order to give the carriers time to present the Board with a new system for priority handling of air freight and file the appropriate tariffs, the Board has decided to extend its approval of the air express agreements, and REA's exclusive express authority, through July 31, 1974.

22/ On April 16th the Brotherhood of Railway and Airline Clerks sought leave to file an answer in support of REA's motion for extension, arguing that termination of REA's air express authority would cost many of REA's employees their jobs. REA's petition for reconsideration also refers to the impact our decision would have on its employees, and the Board has, of course, taken this consideration into account as a public interest factor, but has found that the public interest will, on balance, be favored by the actions we have ordered. Moreover, it is our belief that since the air cargo industry will be strengthened by the termination of air express, the net impact on the industry's employees will be a favorable one. Further, BRAC's position is predicated on the view that the possibility exists that the present air express system can continue. However, we have concluded to the contrary. Since BRAC is not a party, and has not shown good cause for late filing, we shall deny its motion.

23/ REA also claims that the airlines and forwarders, need substantially more than six months to adjust to the Board's decision to terminate air express. Again, REA provides no factual support for its claim and has otherwise failed to support its argument. In fact, the airlines and forwarders, speaking for themselves, dispute REA's contention, and further state that they will have no difficulty making whatever adjustments are required by the Board's order.

Our decision not to extend the termination date of air express as requested by REA to all intents and purposes moots REA's request for dual authority. Even apart from that, however, we would not grant the authority REA wishes. As discussed in Order 73-12-36, such dual authority would present a variety of problems, including the possibility of serious confusion on the part of the public. Moreover the grant to REA of dual authority would be a meaningless gesture since the airlines have made it more than plain that they would not continue to deal with REA as air express ground agent if REA obtained air freight forwarder authority.

ACCORDINGLY, IT IS ORDERED THAT:

1. The petition for reconsideration and the motion for extension filed by REA Express, Inc., be and they hereby are denied;

2. The motion of the National Small Shipments Traffic Conference for leave to file an untimely reply to REA's petition for reconsideration be and it hereby is granted;

3. The motion of REA Express, Inc., for leave to file an otherwise unauthorized motion for extension, and the motions of the Air Freight Forwarders Association, Inc., Emery Air Freight, Inc., the National Small Shipments Traffic Conference, the participating airlines, and United Air Lines, for leave to file otherwise unauthorized answers to REA's motion for extension be and they hereby are granted;

4. The motion of REA Express, Inc, for leave to file an otherwise unauthorized reply to the answer of the Airfreight Forwarders Association to REA's petition for reconsideration, and the motion of the participating airlines for leave to file an answer to REA's reply, be and they hereby are granted;

5. Ordering paragraph "3" of Order 73-12-36 be and it hereby is modified to read as follows:

"3. That the exemption authority of REA Express, Inc., to conduct operations in air transportation initially granted by Order Serial Number 941, dated March 13, 1941, as amended (the most recent amendment authority being granted by exemption Order E-22273, dated June 4, 1965) be and it hereby is terminated on the date that REA commences air freight forwarder operations pursuant to an authorization issued in accordance with our decision herein, or on August 1, 1974, whichever date occurs first;"

6. Except to the extent granted herein, all motions, applications and requests involved herein be and they hereby are denied; and

7. This Order shall be served on all persons on whom Order 73-12-36 was served, and the Brotherhood of Railway and Airline Clerks.

TIM, Chairman, GILLILLAND, Vice Chairman, and MINETTI, Member, concurred in the above opinion and order. WEST and O'MELIA, Members, did not take part in the decision.

EDWIN Z. HOLLAND

Secretary

(SEAL)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REA EXPRESS, INC., Petitioner, -v- CIVIL AERONAUTICS BOARD, Respondent.	No. PETITION FOR REVIEW

REA Express, Inc. hereby petitions for review of Orders 74-5-23, 74-5-24 and 74-5-25 of the Civil Aeronautics Board, entered May 6, 1974, Order 74-4-1, entered April 1, 1974, and related Orders 73-12-36 and 74-2-118.

Dated: New York, New York
May 7, 1974

Arthur M. Wisehart
219 East 42nd Street
New York, New York 10017
Attorney for Petitioner
REA Express, Inc.

Of Counsel:

John J.C. Martin
Peter G. Wolfe
219 East 42nd Street
New York, N.Y. 10017

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER G. WOLFE, being duly sworn, deposes and says that on the 7th day of May, 1974, he served the foregoing Petition for Review upon all parties who have been admitted to participate in the related proceedings before respondent Civil Aeronautics Board, by causing a true copy to be mailed in the U.S. Mail, postage prepaid, to said parties at the addresses appearing below:

Air Canada
600 Madison Avenue
New York, N.Y. 10022

Airlift International, Inc.
International Airport
Miami, Florida 33148

Air West, Inc.
San Francisco International Airport
San Francisco, California 94128

Alaska Airlines, Inc.
Seattle-Tacoma Int'l Airport
Seattle, Washington 98158

Allegheny Airlines, Inc.
Hanger 12, National Airport
Washington, D.C. 20001

American Airlines, Inc.
633 Third Avenue
New York, N.Y. 10017

Aspen Airways, Inc.
Stapleton Int'l Airport
Denver, Colorado 80207

Braniff Airways, Inc.
Braniff Tower
P. O. Box 35001 Exchange Park
Dallas, Texas 75235

Caribbean-Atlantic Airlines, In
P. O. Box 6035, Loisa Station
Santurce, Puerto Rico 00914

Compagnie National Air France
1350 Avenue of the Americas
New York, N.Y. 10019

Continental Air Lines, Inc.
International Airport
Los Angeles, California 90009

Delta Air Lines, Inc.
Atlanta Airport
Atlanta, Georgia 30320

Eastern Air Lines, Inc.
10 Rockefeller Plaza
New York, New York 10020

The Flying Tiger Lines, Inc.
International Airport
Los Angeles, California 90009

Frontier Airlines, Inc.
5900 E. 39th Avenue
Denver, Colorado 80207

Los Angeles Airways, Inc.
5921 W. Imperial Highway
Los Angeles, Calif. 90045

Mohawk Airlines, Inc.
Oneida County Airport
Utica, New York 13503

National Airlines, Inc.
P.O. Box 2055
Airport Mail Facility
Miami, Florida 33159

New York Airways, Inc.
LaGuardia Airport Station
Flushing, New York 11371

North Central Airlines, Inc.
6201 34th Ave. South
Minneapolis, Minn. 55450

Northeast Airlines, Inc.
Logan Int'l Airport
Boston, Mass. 02128

Northwest Airlines, Inc.
Minneapolis-St. Paul Int'l
Airport
St. Paul, Minn. 55111

Ozark Air Line, Inc.
Box 10007, Lambert Field
St. Louis, Missouri 63145

Pan American World Airways,
Inc.
Pan Am Building
New York, New York 10017

Piedmont Aviation, Inc.
Smith Reynolds Airport
Winston-Salem, N.C. 27102

San Francisco and Oakland
Helicopter Airlines, Inc.
Metropolitan Oakland Int'l
Airport, Box 2525
Oakland, California 94164

Seaboard World Airlines, Inc.
Seaboard World Bldg.
John F. Kennedy Int'l Air-
port
Jamaica, N. Y. 11430

Southern Airways, Inc.
Atlanta Airport
Atlanta, Georgia 30320

Texas International Airlines,
Inc.
W.P. Hobby Airport
Houston, Texas 77060

Trans Caribbean Airways,
Inc.
714 Fifth Avenue
New York, N. Y. 10019

Trans World Airlines, Inc.
605 Third Avenue
New York, N. Y. 10016

United Air Lines, Inc.
P.O. Box 66100
Chicago, Illinois 60666

Western Air Lines, Inc.
6060 Avion Drive
Los Angeles, California
90009

Air Freight Forwarder
Association
Louis P. Haffer
Robert N. Meiser
1730 Rhode Island Avenue,
N.W.

Russell S. Bernhard
1625 K Street, N. W.
Washington, D. C. 20006

Aero Special Air Freight, Inc.
William R. Kraham
Watergate Six Hundred
Washington, D. C. 20037

BOR-Air Freight Company, Inc.
Paul Reiber
1625 Eye Street, N. W.
Washington, D. C. 20006

C. F. Air Freight, Inc.
John L. Richardson
Suite 1100
1660 L Street, N. W.
Washington, D. C. 20036

Domestic Air Express, Inc.
Alan F. Wohlstetter
One Farragut Square South
Washington, D. C. 20006

Emery Air Freight Corporation
Jerry W. Ryan
1100 Connecticut Avenue N. W.
Washington, D. C. 20036

Imperial Air Freight Service, Inc.
Henry Jerum
151 Oliver Street
Newark, New Jersey 07105

J. E. Bernard & Co., Inc.
Arthur D. Bernstein
1054 - 31st Street, N. W.
Washington, D. C. 20007

Jet Air Freight
Gary L. Zimmerman
Suite 201
9100 Wilshire Boulevard
Beverly Hills, California 90212

Southern Pacific Air Freight, Inc.
Richard P. Taylor
1250 Connecticut Avenue, N. W.
Washington, D. C. 20036

Bureau of Operating Rights
Jerome B. Blum
1825 Connecticut Avenue, N. W.
Washington, D. C. 20428

Trans-Air Freight System, Inc.
Robin Steiner
153-40 Rockaway Boulevard
Jamaica, New York 11434

United Parcel Service Company
Paul Y. Seligson
2021 L Street, N. W.
Washington, D. C. 20036

Wells Fargo Air Express, Inc.
Robert W. Oliver
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036

Wings and Wheels Express, Inc.
Joseph B. Goldman
Suite 900
1776 K Street, N. W.
Washington, D. C. 20006

Greyhound Van Lines, Inc.
Greyhound Lines, Inc.
Greyhound Corporation
Robert D. Rierson
10 South Riverside Plaza
Chicago, Illinois 60606

National Industrial Traffic League
Frederic L. Wood
914 Washington Building
Washington, D. C. 20005

National Small Shipments Traffic Conference and Drug and Toilet Preparations Traffic Conference
Eastern Industrial Traffic League
Allied American Bird Company
William Q. Keenan
233 Broadway
New York, New York 10007

Department of Defense
Captain Richard A. Peterson
Regulatory Law Office
Office of the Judge Advocate General
Department of Army
Washington, D. C. 20310

Allied American Bird Company
John Wilson
% Hartz Mountain Products
50 Cooper Square
New York, New York 10003

Federal Express Corporation
Nathaniel P. Breed, Jr.
Hale, Russell & Stentzel
1001 Connecticut Ave. N.W.
Washington, D. C.

Society of American Florists
William J. Augello
120 Main St.
Huntington, N. Y.

American Kennel Club
Leila Sears
51 Madison Ave.
New York, N. Y.

National Air Transportation Conferences, Inc.
Seamon, Sullivan & Wasko
733 15th St.
Washington, D. C.

U. S. Department of Commerce
Washington, D. C.

U. S. Department of Defense
Washington, D. C.

U. S. Department of Transportation
Washington, D. C.

U. S. Department of Justice
Washington, D. C.

Department of U. S. Postal Service
Washington, D. C.

Aquarium Supply Company
Marshall Meyers
1133 15th St. N. W.
Washington, D. C. 20005

R. Robert Popeo
Charles River Breeding Laboratories
One Center Plaza
Boston, Mass. 02108

Fabulous Felines, Inc.
Milan Greer
133 Lexington Ave.
New York, N. Y. 10016

Kennel Review
Mrs. Janet G. Finney
1915 Eastridge Way
Brea, Calif. 92621

Hawaii Air Cargo Shippers Association, Inc.
Merill Armour
806 15th St. N.W.
Washington, D. C. 20005

ITOFCA, Inc.
Charles W. Singer
33 North Dearborn St.
Chicago, Ill. 60602

Puget Sound Traffic Association
H. E. Franklin
215 Columbia St.
Seattle, Wash. 98104

Raytheon Co.
Ralph G. Driscoll
R. C. Raytheon
141 Spring St.
Lexington, Mass.

Western Regional Floral Traffic Conference
C. J. Van Duker
P. O. Box 3390
Rincorn Annex
San Francisco, Calif.

County of Allegheny, Pa.
Walter S. Feeney
Asst. County Solicitor
401 County Office Bldg.
Pittsburgh, Pa. 15219

Brown County, Wisc.
Robert R. Flatley
Corporation Counsel
Court House
Green Bay, Wis.54301

City of Dallas Tex.
Dallas Chamber of Commerce
City of Fort Worth, Tex.
Fort Worth Chamber of Commerce
Kenneth C. Dippel
501 City Hall
Dallas Tex. 75214

City of Dayton, Ohio
Dayton Area Chamber of Commerce
Edward MacNeal
11 West Ave.
Wayne, Pa. 19087

Friendship International Airport Authority
Chamber of Commerce of Metropolitan Baltimore
Dept. of Transportation of the State of Maryland
Frank Potter
22 Light Street
Baltimore, Md. 21202

Green Bay Area Chamber of Commerce
Gene A. Summerfield
Manager
Transportation Div.
P. O. Box 969
Green Bay, Wis. 54301

State of Hawaii
Nobuki Kamida
Deputy Attorney General
Hawaii State Capitol
415 S. Beretania St.
Honolulu, Hawaii 96813

City of Kansas City, Mo.
Chamber of Commerce of Greater Kansas City
Nordahl E. Holte
2800 City Hall
Kansas City, Mo. 64106

Louisville & Jefferson County Air Board
T. Kennedy Helm, Jr.
1112 Kentucky Home Life Bldg.
Louisville, Ky. 40202

Massachusetts Port Authority
Richard P. Taylor
Steptoe & Johnson
1250 Connecticut Ave.N.W.
Washington, D. C. 20036

City of Memphis, Tenn.
Memphis Area Chamber of Commerce
Raleigh-Durham Airport Authority
City of San Jose, Calif.
Joseph D. Sullivan
700 Woodward Bldg.
Washington, D. C. 20005

Wien Consolidated Airlines, Inc.
O. Victor R. Davis
Box 6247
International Airport
Anchorage, Alaska 99502

Wings and Wheels Express, Inc.
John C. Wisener
Cargo Bldg. No. 89
JFK International Airport
Jamaica, N. Y. 11430

Air Freight Motor Carriers Conference
Thomas M. Knebel
917 Munsey Bldg.
1329 E. St. N.W.
Washin ton, D. C. 20004

Allied American Bird Company
Florida Tropical Fish Industries
National Retail Pet Supply Association
Tampa Livestock Distributors
United Pet Dealers Association
Western Wholesale Pet Supply Association
John Wilson
700 South 4th St.
Harrison, N. J. 07029

American Dog Owners Association
Duncan G. Wright
Box 35176
Detroit, Mich. 48235

American Retail Federation
C. Washer
1616 H St. N.W.
Washington, D. C. 20006

County of Milwaukee, Wisc.
Metropolitan Milwaukee Association of Commerce
Robert P. Russell
Corporation Counsel
Room 207
Courthouse,
Milwaukee, Wis. 53233

Pennsylvania Public Utility Commission
Lawrence T. Joyce
P. O. Box 3265
Harrisburg, Pa. 17120

Tampa Bay Area Parties
(Counties of Hillsborough and Pinellas, Fla..
the City of Tampa and the Greater Tampa Chamber of Commerce)
Don W. Crockett
1001 Connecticut Ave.N.W.
235 Washington, D.C.

City of Toledo, Ohio
Toledo Area Chamber of Commerce
John A. DeVictor, Jr.
Asst. Director of Law
City of Toledo
327 Safety Bldg.
Toledo, Ohio 43624

State of Wisconsin
George B. Schwahn
Asst. Attorney General
State Capitol
Madison, Wisc.

812 (a)

Peter G. Wolfe

Peter G. Wolfe

Sworn to before me this

7th day of May 1974.

Geraldine M. French

GERALDINE M. FRENCH
Notary Public, State of New York
No. 03-1[illegible]
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1975

Order 74-5-74

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 14th day of May, 1974

Authorization of inter-carrier DISCUSSIONS CONCERNING INDUSTRY-WIDE PRIORITY AIR CARGO SERVICE	:	Docket 26238

ORDER DENYING PETITION FOR RECONSIDERATION

REA Express, Inc. (REA) has filed a petition for reconsideration of Order 74-4-1 (April 1, 1974), which was an order on reconsideration of Order 74-2-118 (February 27, 1974).

Order 74-2-118 ruled on a petition of 28 direct airlines participating in the present air express service for authorization to discuss creation of a new priority air cargo service. 1/ After considering the filings of all parties, including REA, by Order 74-2-118, the Board authorized those discussions, subject to conditions. The airlines then filed a petition for reconsideration and modification of some of these conditions. Several parties, including REA, filed answers to this petition. Thereafter, Order 74-4-1 modified the conditions originally imposed. Then REA filed the present petition for reconsideration of Order 74-4-1.

No answers to REA's petition have been filed.

REA's present petition alleges that discussions which involve only inter-direct air carrier procedures will not produce an adequate substitute for air express; that REA should be given the first opportunity to perform the ground services related to priority air cargo service; and that if REA is not allowed to participate as a party in interest in the formulation of the new service, its property and the jobs of its employees will be taken away without due process of law.

1/ The request for such discussion authorization stemmed from the Board's decision in the Express Service Investigation, Docket 22388. (See Order 73-12-36 (December 7, 1973), at pages 38-39, and 41, finding number 6. See, also, Order 74-5-25.)

REA's first two contentions are premature since the Board can evaluate the adequacy of the new priority service when the agreement is submitted, and consider, at that time, whether the arrangements for ground services are adverse to the public interest. REA will have ample opportunity to present its views in this regard at the appropriate time. REA's third contention--that the discussion procedure established by the Board constitutes a denial of due process--was previously raised by REA 2/ and rejected by the Board, and REA has submitted no further facts or argument to persuade us that our original decision was incorrect.

As detailed in Order 74-4-1, the Board has imposed elaborate procedural requirements on these discussions to protect the interests of all prospective users of the airlines' priority service 3/ and the conditions set forth in that order are, we believe, fair to all concerned parties, and are the most conducive to the prompt dispatch of these discussions.

ACCORDINGLY, IT IS ORDERED THAT:

The petition of REA for reconsideration of Order 74-4-1 be and it hereby is denied.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)

2/ See REA answer in opposition to reconsideration, filed March 18, 1974, pp. 3-4.

3/ For example, Order 74-4-1 authorizes interested persons, including REA, to receive notice, agendas and detailed summaries of the airlines' discussions; permits interested persons to comment on the course of action the airlines are taking before a final decision is reached on an agreement and, of course, permits interested persons to comment on any agreement that may be filed with the Board before action is taken by the Board thereon.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOMESTIC AIR FREIGHT RATE INVESTIGATION	Docket 22859

STATEMENT OF POSITION OF THE
BUREAU OF ECONOMICS

The Bureau's positions on the issues listed in the Prehearing Conference Report served January 10, 1972, and those subsequently added to the investigation by Board orders are as follows:

The overall rate level for transportation of air freight in domestic scheduled service is unreasonable. 1/ The reasonable rate level (i.e., revenue need) of the domestic trunk carriers and Flying Tiger is the total economic cost of scheduled domestic air freight service provided in combination and all-cargo aircraft shown in Exhibit BE-D-4002. 2/ For rate-level purposes, specific-commodity and other discount-rated traffic should be treated as general-commodity rated. 3/ (Subissues 1 and 2.)

1/ No information provided suggests that freight rates between the mainland U.S. and Hawaii or Alaska or between Alaska and Hawaii should differ from those found reasonable for the 48 contiguous States. The Bureau has prepared its exhibits on the 50-State operations of the trunk carriers and Flying Tiger, and our position as to rate level and structure applies nationwide.

2/ If warranted, the capacity cost portion of total economic costs should be adjusted to allow for increased fuel expenses.

3/ The Board should require that the carriers continue to file the 10% O&D sample on a monthly basis in order that proposed future changes in rates may be properly analyzed.

The appropriate basis for costing air freight service is the cost of all-cargo and combination aircraft service. (Subissue 2.)

The appropriate methodology for determining noncapacity costs attributable to airfreight is summarized in Exhibit BE-D-4400. (Subissue 3.)

The appropriate methodology for determining capacity costs attributable to belly cargo in combination aircraft is the space basis employed in the Nonpriority Mail Rates Case, Order 70-4-9. Overall combination-aircraft capacity costs are adjusted to reflect load-factor and seating-configuration standards adopted in Phases 6A and 6B of the Domestic Passenger-Fare Investigation. Belly and all-cargo capacity costs should be allocated among baggage, freight, express, and mail on the basis of relative capacity used as determined by converting ton-miles to cubic foot-miles by the use of densities shown in Exhibits BE-IR-2701 to 2704 Revised and applying a weighting of 2 as the service factor for baggage in combination aircraft. (Subissues 3, 4, and 9.)

No "priority weightings" should be applied in costing air freight service. The Bureau recommends the use of a "service factor" for baggage in allocating belly capacity costs of combination aircraft. The service factor assigns capacity costs to baggage in excess of the costs allocable on the basis of relative space actually used in recognition of the fact that these aircraft operate primarily to serve passenger traffic. Priority of loading of other cargo traffics in both combination and all-cargo aircraft should be reflected not in costing, but in pricing, such as for reserved airfreight, small-package service, or other priority boarding services. (Subissues 5 and 3.)

Investment recognized for the purpose of costing air freight service is shown in Exhibit BE-D-4512. (Subissue 6.)

Rate of return on investment and treatment of leased aircraft, deferred Federal income taxes, and aircraft depreciation in costing air freight service should be the same as in Phases 1, 2, 3, and 8 of the Domestic Passenger-Fare Investigation. Phases 1, 2, and 3 are by their terms applicable to this ratemaking proceeding; see sections 399.42, 43, and 44. (Subissues 7 and 8.)

As noted previously, the load-factor standard adopted in Phase 6B of the DPFI should be applied to combination-aircraft capacity costs. For all-cargo capacity costs, the carriers' forecast load factors are deemed reasonable and should be adopted as a standard if necessary. (Subissue 9.)

Line-haul costs for various types of equipment and length of haul are those shown in Exhibit BE-D-4910, which distributes costs on a flight basis and accounts for circuity, plus an average 4.21% per mile in recognition of the higher costs attributable to online trips (the additional costs would range from 5.83% at 150 miles to 3.70% at 2,651 miles and over). In addition, the current extraordinary increases of fuel and oil expenses should be reflected in the following manner:

> line-haul capacity cost per pound-mile (including fuel and oil expense increases) = line-haul capacity cost per pound-mile (BE-D-4900) x [(fuel and oil expense per block hour ÷ total line-haul costs per block hour) x percent increase in fuel costs per gallon]/

(Subissue 15.)

Value of service should be considered in the rate structure in determining the reasonableness of rates for specific commodities below the rates for general commodities and for priority or reserved-space services rated higher than GCR's. (Subissue 10.)

The air freight rate structure is unjust, unreasonable, unjustly discriminatory, unduly preferential, and unduly prejudicial. General commodity bulk and container rates should be prescribed which cover fully allocated costs by distance in combination and all-cargo aircraft. The general-commodity rate structure would thus not include "minimum charges," "weight breaks," or "container discounts" as such. The rate for a shipment of any weight would be cost-based. Bulk rates would be determined from formula elements including charges per shipment, per piece, and per pound (based on Parsons man-minutes) and capacity charges consisting of rates per pound and per pound-mile. Rates for shipper-unitized freight handled as bulk (i.e., small containers) are based on the same type of formula. Rates for the larger shipper-loaded containers (referred to as "handled as bypass") are based on charges per shipment and per container plus a capacity charge consisting of rates per cubic foot and per cubic foot-mile. The container rates are thus cost-based on a space and handling cost. In addition, an excess weight charge would apply whenever the stowed density of the container exceeded 12 pounds per cubic foot. The rates therefore preserve containerization and density incentives and also recognize the weight limitations of all-cargo aircraft. Extra pieces in a shipment outside the container would be rated separately at the bulk rate, except

that there would be only one "shipment" charge. See Exhibit RE-D-4900. Lastly, the cost-based rate structure should not include directional rates for general commodities or container traffic. The Minimum Charges opinions (Orders 72-4-105, 72-6-68, 73-4-110, 73-4-111, 73-8-9, and 73-8-10) should be modified to reflect these conclusions. (Subissues 11, 12, 13, 14, 16, 17, 19.)

"Premium" cost-based rates should be permitted on certain categories of bulk commodities. Container rates should apply to such commodities shipped in containers. Exhibit BE-D-4900. The cost-based rate formulas for hazardous and environmentally controlled, valuable, live animal, and human remains traffic should be prescribed as maximums. 4/ The Parsons Report indicates that different costs are applicable to different types of live-animal traffic, as presented in the Bureau's Revised Exhibit BE-D-4909. The Board's opinion in the Premium Rates case, Order 73-6-103, should be modified to reflect the maximum cost-based rates recommended by the Bureau. The surcharge for hazardous materials proposed by United and Braniff and suspended by Orders 73-12-116 and 74-1-100 (Dockets 26265 and 26326, consolidated herein) should be ordered canceled and the lawful maximum rate prescribed as that applicable to hazardous materials in Exhibit BE-D-4900. (Subissues 18(a) and 14.)

As to small-package rates, some rate higher than cost should be allowed on the basis of value of service. Thus the priority service

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4/ A customer service charge of $2.77 was inadvertently omitted from Exhibit BE-D-4900. When incurred, it applies to regular bulk, environmentally controlled and hazardous, and valuable freight shipments.

offered (i.e., guarantee of specific flight) and the refund rule proposed by the Bureau (i.e., refund of entire charge rather than half, as at present, Exhibits BE-DT-170, DE-172, when the package is not carried on the specified flight) justify a rate higher than cost. The Bureau recommends small-package charges which increase with distance:

Mileage Block	Proposed Charge
0-1000	$ 25
1001-2000	30
2001-3000	35
3001-4000	40
4001-5000	45

(Subissues 18(d) and 14.)

Discount rates should be offered at a carrier's risk and not affect the general-commodity rate level. Specific-commodity rates are discriminatory and have not been justified by cost differences. They may be justifiable on competitive and promotional grounds and must be reasonably related to cost. The Board should therefore prescribe minimum rates for bulk specific commodities. (The maximum rates, of course, would be those resulting from the Bureau formulas for general and specified categories of commodities.) When specific commodities are shipped in containers, the rates applicable to the container type should apply, with no additional discount for commodities shipped. To be reasonably related to costs, specific commodity bulk rates should cover all terminal costs related to the commodity and a substantial portion of linehaul costs reflecting at least used capacity. The minimum lawful rates for a bulk specific commodity should therefore be the sum of the applicable terminal charges

(shipment, piece, and pound charges and $2.77 customer service charge where applicable) plus 50 percent of the linehaul charge per pound-mile. The applicable terminal charges are those for the bulk category in which the commodity falls: for example, the terminal charges for fruit or vegetable specific commodity rates are those for "environmentally controlled" traffic plus the customer service charge (Exhibit BE-D-4900). If the commodity does not fall into a particular category, the regular bulk freight terminal charges would apply. (Examples of minimum specific-commodity rates are shown in Exhibit BE-D-4953 compared with current general and specific and BE proposed general and maximum specific rates.) All currently effective specific-commodity rates not falling within the minimum and maximum range are unlawful and should be ordered canceled 90 days after Board decision; provided that carriers may file before that date, on 30 days' notice, tariffs meeting the test for any specific-commodity rates they wish to continue in effect. All specific-commodity tariffs must be marked to expire within 18 months, and the carriers offering the rate must file the periodic reports shown in Exhibit BE-D-4908. If a carrier wishes to extend a specific-commodity rate beyond the 18-month period, or if it wishes to establish a new specific-commodity rate, it must show that the rate will meet the minimum-maximum test and the profit-impact test shown in Exhibit BE-D-4907 and that a discount is justified to generate traffic to fill unused capacity in the particular markets where the rate is proposed to be effective. Specific-commodity rates may be directional if they meet these tests. Such tariff filings will be subject to the usual complaint

procedure. Specific-commodity rates may also be limited to off-peak times, but there could be no additional discounts. In order to assure that the promotional and capacity-filling purposes of specific-commodity rates are met, a minimum shipment weight of 500 pounds should be applicable to most specific-commodity rates, but should not be applicable to hazardous, live-animal, or human remains shipments. The Board's opinion in the United Specific Commodity Case, Order 72-11-78, should be modified to reflect these conclusions; and the rates ordered investigated in Order 71-2-116 (Docket 23145) should be ordered to comply or be canceled. (Subissues 18 and 14.)

Reduced rates for "parcel post", military stores, and household goods and personal effects moving on Government bills of lading have not been justified and are unlawful. They should be subject to the same criteria and requirements as other specific commodity rates. The Board opinion in the Parcel Post case, 39 C.A.B. 40, should be modified to reflect this conclusion. (Subissues 18(b) and (c).)

Current "import" and "export" rates and rules are unlawful. Import and export rates and rules should be the same as those applicable to bulk or container GCR's for air transportation (except where a bulk SCR meets the SCR criteria), and the charges and terms and conditions for ancillary services for import or export traffic should be stated separately in the tariff. No justification has been offered for current higher or lower rates. (Subissue 18(f).)

"Airconomy", deferred, and space-available rates should be ordered canceled. No support has been offered for them, and there are apparently additional costs for warehousing. (Subissues 18(g) and (h).)

Maximum daylight off-peak discounts of 10.4 percent from the bulk or container general commodity rate (whichever is applicable) should be permitted. The 10.4 percent is based on the difference between (1) average total fully allocated costs for combination and all-cargo aircraft (29.18 cents per RTM, Exhibit BE-D-4002) and (2) average total fully allocated costs for all-cargo aircraft (26.15 cents). The daylight rate should cover all-cargo aircraft costs, since the rate is not intended to be generative but to divert traffic from night all-cargo flights on which it would otherwise move to daytime flights where excess cargo capacity is produced by passenger schedules. The rates should be applicable only during prescribed daylight time-of-tender hours; the Bureau has recommended outside limits of applicability of 4 a.m. to 4 p.m., but the carriers could confine the rates to fewer hours. General-commodity daylight rates should not be directional, and no additional discount should be permitted for specific commodities. The rates ordered investigated in Order 71-9-71 (Docket 23840) should be ordered canceled. (Subissue 18(g).)

The current practice of providing reserved airfreight service without extra charge is unjustly discriminatory. If reserved or priority service is offered, it must be done pursuant to a tariff setting forth all the applicable rules, and the rates should reflect priority reservation service. The Bureau has proposed model rules for reserved freight service in the Liability Rules case, Docket 19923, and supports them as a statement of the initial relation between shipper and carrier; neither that case nor this one reaches the issues of relative boarding priorities for various

types of cargo traffic or the rates for priority service, which must be left for subsequent determination upon the filing of tariffs by the carriers. (Subissue 18(i).)

Some carriers permit shippers and/or consignees to load or unload containers on the carriers' premises; some make no charge, and others charge varying amounts. Orders 71-5-52 and 72-10-42. There is little evidence of record, but the carriers who make no charge appear to do so as a good-will or promotional measure, and the Bureau's position is that the practice is not unlawful. For those carriers who do impose a charge, Exhibit BE-D-4902 sets forth the maximum charges that should be permitted. Higher charges should be ordered canceled. (Subissue 20 and cited orders.)

Charges for carrier loading and unloading of containers are unlawful and should be ordered canceled. Orders 71-5-13, 73-8-46, and 73-10-5. Carriers receive freight either as bulk or in containers. When it is tendered as bulk and delivered as bulk, the bulk rate applies. When it is tendered as bulk and delivered to the consignee in a carrier-loaded container, the bulk rate should still apply. When freight is tendered in a "bypass" container and delivered in the container, the container rate applies. When it is tendered in a container and delivered as bulk, the carrier incurs the additional cost of unloading the container; and the rate should be the container rate plus the cost of unloading. Exhibit BE-D-4901. (Subissue 20, cited orders, and Docket 25940.)

Parsons' man-minutes, and the Bureau's costs, include the transfer from one plane to another. Therefore, a combination of local rates applied

to on-line shipments would duplicate those costs. The Bureau therefore recommends that rates for shipments having on-line transfers be no higher than those receiving nonstop or direct service. Competing carriers may offer joint rates at the same level, but no lower, to meet competition. (Joint rates currently are offered for the most part only in such competitive situations.) The maximum joint rate would be equal to the sum of the local charges applicable to the participating carriers. Since neither the establishment of joint rates nor the division of revenues is at issue in this investigation, the Board's order cannot require the establishment of additional joint rates nor otherwise affect existing interline rates aside from the general and specific conclusions as to local rates. (Subissues 15 and 14.)

For general-commodity ratemaking purposes, the mileage standards adopted by the Board in Phase 9 of the Domestic Passenger-Fare Investigation, Order 74-3-82, dated March 18, 1974, should be applied.

The format of the tariff in which the rates and rules are published affects the rates and the rate structure, and should be considered as an issue in this proceeding. The Bureau will present a tariff format for a container and a bulk tariff which implements the Bureau's proposed rate structure.

The existing dimensional weight rules set forth in BE-DT-40 are unlawful, and should be ordered canceled. The Bureau will propose a model dimensional weight rule in which the chargeable weight of a shipment will be the greater of the actual weight or a cubic dimensional weight derived from a standard of one pound for each 194 cubic inches or 8.9 pounds per

cubic foot. The cubic dimensional weight will apply to the total of the capacity line-haul cost and the terminal capacity and noncapacity cost elements per pound of the Bureau's multi-element formula for the various types of bulk traffic and shipper-unitized freight handled as bulk.

Each separately rated category of traffic in a shipment set out in BE-D-4900 and each category of traffic in a shipment which is provided assembly service as described in Rule 73 of CAB Tariff ATP-96 will be cubed.

Present Exception No. 3 of Rule 50 of CAB Tariff ATP-96 and Rule 92 of CAB Tariff ATP-92 are unlawful and should be ordered canceled. Any carrier-owned container tendered to the carrier which contains any freight should be tendered as a containerized shipment subject to the rates, charges, and provisions of the applicable container tariff, or alternatively, tendered as bulk under the bulk tariff. In the latter instance, the carrier shall assess a container unloading charge for each type of container each time freight is so tendered. The container so tendered shall be considered as the return of an empty container under Model Rule 10. The Bunyan Case (American Airlines, Inc., Enforcement Proceeding), 30 C.A.B. 439 (1959) should be modified accordingly.

The existing mixed shipment rules listed in BE-DT-50 are unlawful and should be ordered canceled. The Bureau will propose a model mixed shipment rule for the bulk tariff specifying how separately rated categories of traffic tendered in one shipment will be rated. The shipment charge will be

the shipment charge for the highest category of traffic in the shipment. In assessing the total piece charge, the piece charge for each separately rated category of traffic will be assessed for the number of pieces in that category of traffic. In assessing the total per pound charge, the capacity line-haul cost per pound-mile and the capacity and noncapacity terminal charges will be assessed for the number of pounds in each separately rated category of traffic. The dimensional weight will be applied to each separately rated category of traffic.

Specific commodity rated traffic will be rated as above except that there will be a 500-pound minimum weight for the particular specific commodity. No mixing of any commodity other than the commodities listed within the rate item will be permitted to reach the 500-pound minimum.

The present oversize-piece rules listed in BE-DT-60 are unlawful, and should be ordered canceled. The Bureau will propose a model rule concerning oversized pieces which will make the following changes to the model rules listed in BE-DE-62. The $25.00 handling charge should be eliminated. The minimum chargeable weight will be based upon a density of 8.9 pounds per cubic foot. In applying the transportation charges to the oversized piece and to any other freight in the same shipment which can be accommodated on the same pallet or pallets without obstructing tie-down, the carriers will do the following: (1) assess the highest shipment charge for any category of traffic in the shipment, (2) assess the piece charge to the number of pieces in each separately rated category of traffic in each shipment, (3) apply the minimum chargeable weight to the capacity line-haul rate and the terminal capacity and noncapacity

pound charges for the category of traffic in which the oversize piece falls; and (4) if the actual weight of the oversized piece and the actual weight of the other freight in the same shipment which can be accommodated on the same pallet or pallets without obstructing tie-down exceed the minimum chargeable weight, apply the capacity line-haul rate per pound-mile and the capacity and noncapacity terminal charges for any category of traffic to the actual weight of each separately rated category of traffic. The Aircraft Loading Charts and City Directories will not be required to be filed in a tariff. The exclusion of the application of specific commodity rates to oversized pieces is not unlawful. The exclusion of the application of joint rates to oversized pieces is not unlawful. The exclusion of the application of Rule 22(B)(2) of CAB Tariff ATP-96 is unlawful, and this exclusion should be ordered canceled.

The general topic of the lawfulness of rules concerning the monetary limit of the carriers' liability and/or related declared value is presently being determined by the Board in Docket 19923, Air Freight Liability and Claims Rules and Practices. The lawfulness of the rules in BE-DT-30 concerning that topic should be determined by the Board's decision in Docket 19923. The present rules listed in BE-DT-30 and successor tariffs concerning shipper/consignee liability for loss or damage to carrier-owned containers and related equipment are unlawful, and the lawful rule which should be prescribed is Model Rule 11 in BE-DE-31.

The general topic of the lawfulness of rules concerning routing and rerouting of shipments is presently at issue in Docket 19923, Air Freight Liability and Claims Rules and Practices, and in Docket 19797, Rule for

Substitution of Other Service for Air Transportation. The lawfulness of the rules listed in BE-DE-70 concerning that topic should be determined by the Board's decisions in those dockets.

The present tariff rules governing the small package tariff, CAB Tariff ATP-140, and the entire CAB Tariff EA-287 are unlawful, and should be ordered canceled. The lawful rules which should be prescribed are listed in BE-DE-172. However, Model Rule 15 - Acceptance of Tariff should be amended to reflect a standard minimum time of tender of 30 minutes for packages tendered at the airport ticket counter or the airport baggage check-in counter, and a standard minimum time of tender of 60 minutes at the airport freight office. Model Rule 25 - Shipments Not Acceptable should be modified to require that restricted articles listed in CAB Tariff ATP-82 which are acceptable for transportation on passenger aircraft will only be accepted at the airport freight office.

The present rules listed in BE-DT-90, Rule 40 of CAB Tariff ATP-208, and Rule 45 of CAB Tariff ATP-212 concerning the free time granted by the carriers for the loading by a shipper or the unloading by a consignee of a carrier-owned container, and the rental charge for the detention time in excess thereof are unlawful, and should be canceled. The lawful rule which should be prescribed by the Board is Model Rule 10 in BE-DE-91. This rule should be modified to reflect which carriers furnish which type of carrier-owned containers or support equipment. Also Model Rule 10(A)(2) should be modified to give the consignee a total of 72 hours free time when the consignee delivers the container back to the carrier loaded rather than empty.

The present outside piece rules listed in BE-DT-80 and successor tariffs are unlawful and should be canceled. The lawful rule which should be prescribed is Model Rule 9 in BE-DT-81, except as modified to reflect that there would be only one "shipment" charge. The "shipment" charge would be that shipment charge for the particular category in which the outside piece would normally fall. (See Exhibit BE-D-4900.)

The present practice of excluding the use by a shipper of normal pickup service at the otherwise applicable rate in Rules 13 of CAB Tariff ATP-131 and 60 of CAB Tariff ATP-208 and 212 is unlawful and should be ordered canceled.

Since "parcel post" rates are unlawful and should be canceled, the present rules listed in BE-DT-160 should be canceled, and the regular pick-up and delivery provisions applicable to specific commodity rated traffic should apply.

The daylight rates should have a 4:00 a.m. to 4:00 p.m. time of tender restriction as a maximum, but the carriers could confine the rates to a more strict time of tender standard within this maximum.

"Airconomy", deferred, and space-available tariffs should be ordered canceled. In addition, the provisions in CAB Tariff RD-8 providing that a $2.00 charge will be assessed for the notifying of a consignee of the arrival of a shipment, and providing that no pick-up service will be provided are unlawful, and should be ordered canceled.

Changes in the Board's regulations concerning the precedence of rates will be necessitated by the adoption of the Bureau's rate structure. The

Bureau will recommend that a separate rulemaking proceeding be initiated after the issuance of a final decision by the Board in this case.

Respectfully submitted,

Steven K. McKinney

William J. Wagner

Lawrence R. Myers
Bureau Counsel

Washington, D. C.
May 20, 1974

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Statement of Position have been served this date upon counsel for all parties of record in this proceeding.

Steven K. McKinney

Washington, D. C.
May 20, 1974

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

EXPRESS SERVICE INVESTIGATION	Docket 22388
INVESTIGATION OF AIR EXPRESS RATES	Docket 22387

MOTION OF REA EXPRESS, INC. FOR STAY

REA Express, Inc. (REA), pursuant to Section 10(d) of the Administrative Procedure Act, hereby moves the Board for a stay of the effective date of Orders 74-5-23 and 74-5-25, dated May 6, 1974, pending judicial review of these orders and related orders in REA Express, Inc. v. Civil Aeronautics Board, United States Court of Appeals for the Second Circuit, No. 74-1611, filed May 7, 1974. The Board has previously granted stays for such a purpose. See Intra-Alaska Case, 30 C.A.B. 885 (1960).

As described more fully below, the granting of a stay in this case is necessary to prevent irreparable injury to the shipping public and to REA, to permit judicial

review to be completed before irreversible damage is done in a case where REA is likely to succeed, and to promote the public interest.

PROCEDURAL BACKGROUND

The current Air Express cases began when REA filed a Petition and Complaint on April 9, 1970, asking (a) that the Air Express arrangement be made permanent and provide for arbitration of future disputes if negotiations were unable to resolve them, (b) that REA be permitted to file independent Air Express tariffs as recommended by the Board in 1948 (9 C.A.B. at 486), and (c) that the amount received by the airlines for Air Express be fairly related to what they charge for other types of cargo (Docket 22096).

The Board dismissed REA's Petition and Complaint, but at the same time initiated two separate investigations: (1) the Investigation of Air Express Rates, Docket 22387, in which future Air Express rates and divisions were placed in issue; and (2) the Express Service Investigation, Docket 22388, in which the continuation of Air Express was placed in issue.

In other words, what REA petitioned for on April 9, 1970 was a remedy. What it got for its pains instead was Docket 22388, a proceeding which both questioned whether the Air Express business carefully built up by REA over 40 years should remain in existence, and invited its arch-competitors, the air freight forwarders -- who previously had not shown the slightest interest -- to apply for the same authority. Approximately twenty-five of them did so.

REA promptly appealed the Board's dismissal of REA's Petition and Complaint (REA Express, Inc. v. Civil Aeronautics Board, 2d Circuit, 1970, No. 35474). The Board thereupon reinstated REA's Petition and Complaint for the purpose of permitting retroactive divisions to be considered in Docket 22387 (Order 71-2-68), and argued to the Court of Appeals that this action mooted out REA's appeal. At that time the Board represented to the Court of Appeals that such order

> "...allows the Board to provide REA a retroactive adjustment of joint fare divisions back to April 9, 1970, the date of the filing of the REA 'Petition and Complaint,' should the Board otherwise determine in the pending investigation (1) that it has the power to determine the divisions between REA and the carriers, (2) that it has the power to compel a retroactive readjustment of such divisions, and (3) that

> such action would be 'just, reasonable and equitable' .... Of course, any determination made by the Board to grant or withhold such relief in the pending investigations will be subject to judicial scrutiny under Section 1006 of the Act 49 U.S.C. 1486). (Motion of Civil Aeronautics Board, p. 5, February 16, 1971; emphasis added.)

The Court of Appeals therefore dismissed REA's appeal as moot on March 15, 1971.

As indicated above, REA's original Petition and Complaint requested that Air Express authority be made permanent so that the service could continue and the necessary investment capital attracted. The Board's initiation of Docket 22388 invited forwarders to apply for Air Express authority, and they did so. REA responded by applying for forwarding authority, only as a fall back position, in addition to Air Express, its first preference, not knowing what the Board's ultimate decision would be on exclusivity.

The Board confounded REA's expectations -- particularly in view of the testimony of the shippers and the findings of the Administrative Law Judge -- by ordering Air Express terminated entirely, with an effective date of June 5, 1974 (Order 73-12-36).* At the same time the Board ordered the airlines to provide priority cargo service, although such a service was and is not in existence. The Board later authorized the airlines to hold discussions of such priority cargo service, denying REA's motion to consolidate such discussions with the Express Service Case (Order 74-2-118, Docket 26238). Such discussions were authorized to

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*The Board's grant of forwarding authority to REA was conditioned to commence only upon the termination of Air Express. With its lack of capital, REA could not make such a conversion to a very different type of operation and survive. Accordingly, in its petition for reconsideration, REA requested a transitional period of 18 months of dual operations (without waiving its position

be held in private without admitting the shipping public or REA (Order 74-4-1, Docket 26238). REA's Petition for Reconsideration in Docket 26238, asking that the discussions of priority cargo service be open, was denied (Order 74-5-74).

Since the Board's decision in Order 73-12-36, REA has naturally reviewed its situation. On February 26, 1974 as a result of such review, it communicated its position as follows to the Chairman of the Airlines' Negotiating Committee.

> "A careful and objective, up-dated evaluation of our day-to-day operation -- our improved working relationship -- the effect of the energy crisis -- and the very negative customer reaction that we have had to the recent CAB order dissolving our Air Express priority service partnership have caused us to re-evaluate our corporate position in this matter and to change our policy position regarding Domestic Air Freight Forwarding.
>
> We believe it would be a tragic mistake to allow Air Express to merely "dissolve." We are completely convinced that it is in the best interests of the shipping public, the airline industry, the regulatory agencies and REA for us and the airlines to jointly, aggressively, and in a statesmanlike manner, seek a reversal of the CAB Order in Docket 22388 -- the Air Express Service Investigation case."*

Preservation of Air Express thus is the key corporate objective of REA as to its future air services, and we respectfully ask that the Board act upon this request for a stay in the context of that policy. REA does not want to be an air freight forwarder.

As a result of REA's above statement of position, REA and the airlines had had further discussions looking to the continuation of Air Express. Accordingly

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(cont. fr. p. 4)
that Air Express must be continued in the public interest). However, the Board has ruled this out (Order 74-5-25).

*Emphasis added. REA further indicated that it would withdraw its application for air freight forwarding authority upon resolution of the open issues with the airlines.

they concluded the attached agreement on March 28 dealing with payments through June 1975 and reached tentative agreement on other matters as set forth in the same attachment (Appendix A). A motion to extend Air Express until January 31, 1975 was made by REA so that the Air Express parties would have ample time to reach a successful conclusion of their discussions. A supporting request was submitted on behalf of twenty-four airlines. However, Air Express was extended only until July 31, 1974 (Order 74-5-25, Docket 22388).

The Board's order removed the prospect that the negotiations between REA and the airlines can ever succeed, in the light of its unwarranted and erroneous conclusions about the continuation of Air Express in the public interest, and judicial review of the correctness of that decision therefore became essential.*

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*At the same time, for a variety of reasons, the Board indicated that it was not deciding the issues before it in Docket 22387 and ordered the airlines and REA to hold discussions on issues of retroactive divisions pending in that case (Order 74-5-23). The Board also refused to consolidate it with Domestic Air Freight Rate Investigation, Docket 22859 (Order 74-5-24), or to reopen the record, despite the Board's finding that the record was inadequate.

I. IMPORTANCE OF JUDICIAL REVIEW: PROBABILITY OF SUCCESS ON THE MERITS

REA believes that the Board committed a number of serious errors and that REA will be successful on appeal in Court. It therefore requests this stay so that its opportunity for judicial review and the possibility of effective judicial relief will not be precluded through the termination of Air Express.

A.

The Board ordered the termination of Air Express, finding that "cessation of Air Express service will have no material impact on the public." (Order 73-12-36, p. 22) As stated below in the section on irreparable injury, this conclusion is contradicted by all the evidence presented by shippers who testified in the record as well as by the finding of the Administrative Law Judge. Further it is based on mere speculation.

The Board ignored the findings of Administrative Law Judge Keith, ignored the testimony of shippers that they needed Air Express based on actual Air Express operations for a period of over 40 years, and instead relied on speculations and self-serving declarations by competitors

hoping to profit from REA's demise. Its decision is therefore not supported by substantial evidence.

Pursuant to Section 1006(e) of the Federal Aviation Act (49 U.S.C. §1486(e)) and Section 10(e) of the Administrative Procedure Act (5 U.S.C. §706(e)), the Board's finding cannot be sustained in such circumstances. The Administrative Law Judge's finding and conclusions must be taken into account:

> "Observation of the witnesses is likely to give a more accurate feel than reading a cold record;...The Trial Examiner had 'lived with the case' -- an opportunity not vouchsafed to the Board, and his conflicting report carries some weight against the existence of substantial evidence to support the Board's conclusion" N.L.R.B. v. Majestic Weaving Co., 355 F. 2d 854, 859 (2d Cir. 1966).

A decision is not supported by substantial evidence when it relies on the speculations and assumptions of witnesses and ignores evidence of actual operations and "the necessities of the shipper and the requirements and demands of customers." Aero Trucking, Inc. v. United States, 346 F. Supp. 827, 830(W.D. Pa. 1966). See also Cream Wipt Food Prod. Co. v. Federal Security Administrator, 187 F. 2d 789 (3d Cir. 1951).

B.

The Board found there was a need for priority service, and yet is requiring Air Express to expire prior to the establishment or evaluation of any substitute service. The Board did not consider what alternatives it had to Air Express service in the context of the Express Service Investigation and at what rates such service would be provided. Instead, it ordered the termination of Air Express on the basis of an unknown and untested priority service by the airlines. Further, the Board not only refused to consolidate the airlines' discussions of priority service into the Express Service Investigation, but also effectively precluded REA and the shipping public from participating in those discussions. In essence, the Board has removed an issue from the Express Service Case* and ordered that it be decided in the context of another proceeding, in an ex parte manner instead of on an open record. At the same time, it ordered

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*Order 70-7-110, which instituted the Express Service Investigation, in this Docket, stated as one of the issues (p. 5):

> "Whether the public convenience and necessity require alteration, amendment, or modification of the certificates of the scheduled air carriers to authorize the provisions by the scheduled certificated airlines of a distinct class of priority cargo service (such as air express) either directly by the airlines or through indirect air carriers, or both."

the termination of Air Express service on a date certain before the new service can possibly be developed, proposed, and its adequacy tested, in an evidentiary proceeding. As a leading authority has said:

> "The cardinal principle of fair hearing is...that parties should have the opportunity to meet in appropriate fashion all facts that influence the disposition of the case....Nothing short of bringing the facts into the record, so that an unabridged opportunity is allowed for cross-examination and for presentation of rebuttal evidence, will suffice for disputed adjudicative facts at the center of the controversy. Debatable and critical legislative facts probably need not always be brought into the record, but such facts should be subject to challenge through briefs and argument...." (K. Davis, Administrative Law Treatise, Vol. II, p. 432).

In United States v. Abilene & So. Ry. Co., 265 U.S. 274 (1924), on review of a proceeding instituted by the Interstate Commerce Commission to determine division of rail rates, the United States Supreme Court held that in any proceeding in favor of one carrier as against another, the decision may not be based on evidence not of record. See also Morgan v. United States, 298 U.S. 468 (1936). The courts have also held that evidence or arguments may not be submitted by one party in a hearing without giving his adversary notice so that he can respond appropriately, either

by cross-examination or rebuttal evidence and arguments. Morgan v. United States, 304 U.S. 1 (1937); Burrow v. Finch, 299 F. Supp. 807 (W.D. Mo. 1969), rvsd. on other grounds, 431 F.2d 486(8th Cir.1970). In the second Morgan case, supra, although the proceeding was a general rate investigation, the Supreme Court held that it was adversary in nature because fixing rates might drive respondents out of business. In Nadick v. Civil Aeronautics Board, 305 F. 2d 588 (5th Cir. 1962), the Court said citing the Administrative Procedure Act:

> "It is the considered judgment of Congress that the interest of neither the public nor the person under charge is adequately cared for if the adjudicatory tribunal is to have access to the ex parte partisan views of the investigatory-prosecutorial partisan staff or the material assembled by their efforts." (394 F. 2d 588, 594 (5th Cir. 1962))

The private discussions authorized in the Board's orders relate directly to an issue necessary to the decision on the termination of Air Express, namely that a satisfactory replacement service will be provided. These discussions not only are outside the record, they are even more tainted by the fact that the Board's staff will be present and exposed to the ex parte views of the airline participants. Under the Administrative Procedure Act a

hearing on a record is required for disposition of this issue, and denial of a hearing violates REA's rights and the rights of its shippers, employees, and creditors.

The Board has placed REA in the classic Ashbacker situation. In Ashbacker Radio Co. v. F.C.C., 326 U.S. 327, 333 (1945), the Supreme Court held that "where two bona fide applications are mutually exclusive the grant of one without hearing to both deprives the loser of the opportunity which Congress chose to give him." Air Express and a substitute priority cargo service are mutually exclusive services. The Board has indicated that it will terminate Air Express service and that some undefined proposals for a cargo service will replace it. Ashbacker therefore requires a comparative hearing on the merits of both proposals before Air Express is terminated.

No evidence of record supports the Board's conclusion that satisfactory priority service can or will be provided by the airlines in the absence of Air Express. No shipper testified that such hypothetical service would meet his needs. The self-serving declarations of air freight forwarders, hoping to profit from REA's demise, are not evidence of the fact that such a service will be provided,

or that in practice it can meet the needs of the shipping public.

The Board ignored the shipper testimony and its own finding that priority service is needed in favor of a system the characteristics of which, and the rates to be charged, have not been proposed or ruled upon. Thus no such service could be considered as an alternative to Air Express based on the record made in the case. Unless the alternative service is both (a) developed and then (b) proved to be superior to Air Express, termination of Air Express would arbitrarily and capriciously deprive REA of its property interest in a business it has operated for over forty years, and deprive snippers of the use of the service without due process of law.

C.

As the Supreme Court stated in Atchison, Topeka & Santa Fe Railway Co. v. Wichita Board of Trade, 412 U.S. 800, 817 (1973):

> "Even giving the Commission's opinion the most sympathetic reading we find possible, we cannot discover in it an expressed reason for permitting the railroads to reduce their service without showing that the rates they propose to maintain are reasonable rates for the service they intend to provide." (Emphasis added.)

And the Board cannot properly decide the rates to be charged

for priority cargo service unless it knows what the service will be. Moreover, until final adjudication of the substantive issues in the Rates Case, Docket 22387, the Board will be unable to compare any rates which may in the future be proposed for priority cargo service with reasonable rates for Air Express. Thus the record provides no basis for determining whether the proposed replacement service will be adequate, at rates which will be just and reasonable in comparison with those already in existence. This is especially true because the airlines' start-up costs of a new service will have to be reflected in higher rates.

D.

The dispute undecided by the Board in Order 74-5-23 is that which was the subject of the Petition and Complaint filed by REA on April 9, 1970 in Docket 22096. REA filed that document because it sought permanent Air Express authority and there were important legal questions open which made it difficult for the parties to reach agreement on other issues. It contended that the Board had the duty to determine such questions under Sections 404, 411 and 1002 of the Federal Aviation Act. The Board responded by dismissing the Petition and Complaint, and instituting two different types of proceedings (Orders 70-7-109, 70-7-110).

In view of the economic issues presented in the

Rates Case, the Board had no basis for deciding the public interest factors involved in the Service Case without deciding the Rates Case first. In short, Order 74-5-23 puts the cart before the horse: it refuses to decide the Rates Case on the theory that the Board has already decided the Service Case. But this is completely circular. The grounds for decision in the Service Case can not withstand judicial scrutiny without a prior ruling on the economic issues presented in the Rates case. Even the bare legal issue of whether the Board has power to determine divisions remains undecided -- although this matter has been fully briefed and argued on three separate occasions during a period of over four years(!): (1) before the U.S. Court of Appeals in REA v. Civil Aeronautics Board, No.35474 (2d Cir. 1970) dismissed for mootness; (2) before the Administrative Law Judge; and (3) before the Board on review.

Acceptance of REA's adjustments to the Initial Decision in the Rates Case for just the period of April 1970 through July 1971 alone would have resulted in a payment of over $20 million. The Board has made no finding that $20 million would be insufficient to cure REA's financial problems, nor could it in view of the failure to decide the issue. Thus the Board's finding that REA's financial situation in Air Express can be alleviated "only...if at all" by

a substantial increase in volume is patently premised on a mere assumption without record support (Order 74-5-25, p. 11) and on the Board's adamant refusal to rule on the tendered issues.

As pointed out above (p. 3), when the Board moved to dismiss REA's earlier appeal, the Board represented to the Court that decision on the appeal was unnecessary because the Board's action reinstating REA's Petition and Complaint would allow REA's claim for retroactive adjustment of the divisions to be determined back to April 9, 1970. The Board further stated to the Court that the Board's determination to grant or withhold such relief "...will be subject to judicial scrutiny under Section 1006 of the Act" (p. 5).

We respectfully submit that the time for such judicial scrutiny has now arrived. A stay should be granted so that judicial review may be rendered effectively, without the impending termination of Air Express handing like the proverbial Sword of Damocles over the subject of the litigation.

E.

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §4332, requires agencies to prepare

detailed statements on the effect on the environment of "major Federal actions significantly affecting the quality of the human environment." The Board's decision contained no such statement. Yet the termination of Air Express will have a significant effect on the environment.

Air Express is a nationwide system in which pickup and delivery is handled by a single operator. If pickup and delivery of Air Express shipments were perfomed by various airlines and air freight forwarders, a proliferation of vehicles would add to congestion on the airports. (Testomony of Airline Witness Eichner, Docket 22388, Tr. 386). This evidence is undisputed in the record. At minimum, an environmental statement and findings are required in such circumstances. This requirement can not be ignored, waived, or disregarded because "primary responsibility under the act rests with the agency." City of New York v. United States, 337 F. Supp. 150, 160 (E.D.N.Y. 1972): Arizona Public Service Co. v. Federal Power Commission, 483 F. 2d 1275 (D.C. Cir. 1973).

II. IRREPARABLE INJURY

Failure to grant the requested stay will result in irreparable injury to the shipping public, to REA, to REA's creditors including the airlines, to REA's thousands of employees, and to REA's non-Air Express services including its vital and unique surface express operation.

A.

The irreparable injury which termination of Air Express would inflict upon the shipping public of the United States is well established by the decisions of the District Court for the District of Columbia in Allied American Bird Company et al. v. REA Express, Inc. et al., U. S. District Court, District of Columbia, No. 2289-70 (1970). In that case, Judge William B. Jones granted a temporary restraining order against the termination of Air Express upon a showing that "plaintiffs [the shippers] will suffer immediate and irreparable injury in the form of financial disaster." (Temporary Restraining Order, dated July 31, 1970). Moreover the order was extended twice by Judge June L. Green.

Further, the record in the Express Service Case and the Administrative Law Judge's findings demonstrate that shippers nation-wide are dependent upon Air Express. Its

termination will put many of them out of business.

The effect on specialized market segments such as shippers of live animals and birds (Exhibits AAB-100; AAB-200-328; AAB-600-603; REA-354, Docket 22388), and radioactive materials and materials requiring security (Exhibits NITL-DE-1;2; REA-354), and shippers in the small towns and villages across America, would be disastrous.

Hundreds of shippers have responded to Docket 26238, the Inter-Carrier Discussions Concerning the Creation of Industry-Wide Priority Cargo Service. They have clearly and emphatically declared that they have a clear need for the services that have been performed by REA's Air Express, and that there is no existing substitute. Many of the shippers express their dissatisfaction with the disorganized procedures that have thus far obtained during the airlines' discussions. The shippers repeatedly stated that they require all of the things which Air Express now provides: single-carrier responsibility, simple documentation, expedited ground handling, airlift priority, widespread geographical coverage, extensive commodity coverage, a single ground agency, simple tariffs, speed and consistency, specialized services, and reasonable rates.

As the National Small Shipments Traffic Conference said in its recent concurrence in REA's motion for extension of Air Express:

> "In short, NSSTC's members have a vital interest in the preservation of air Express service, they constitute a broad shipper spectrum and indicate that need for air express service is widespread among the shipping public. Unless REA's motion is granted air express service will terminate in two months, and in the interim the airlines show no likelihood of devising and implementing an adequate substitute." (p. 3)

If Air Express is allowed to expire, these shippers will be deprived of the only service that meets their needs, at an undetermined but incalculable cost to them.

B.

REA has operated Air Express for over forty years, and Air Express today constitutes approximately 40% of REA's total revenues. An immediate termination of Air Express on July 31 will mean an enormous immediate drop in revenues, compounded by the continuing fixed cost of factors such as equipment, facilities and leases which would be far in excess of the needs of REA's remaining operation. It is clear that such a disaster would mean the unnecessary

obliteration of REA. REA could not avert this disaster by becoming an air freight forwarder: it lacks the capital to do so. Once gone, it will be too late to reconstitute REA in any other form, and its investment of money, effort, and property -- its heritage of over 130 years as an American institution, with its origins in the days of the Pony Express -- would be forever lost.

c.

REA employees will also suffer irreparable harm. The result of the Board's action will be to throw approximately 15,000 persons out of work. In cases involving merger or reorganization or suspension or deletion of a carrier's operating authority, the Board has imposed labor protective conditions to prevent such catastrophies. Kent v. Civil Aeronautics Board, 204 F. 2d 263 (2d Cir. 1953); Seven States Area Investigation, 30 C.A.B. 473, 474 (1959). In the Seven States Case the Board had before it the effect on employees of the suspension and deletion of Braniff and Western at various points, and imposed labor protective provisions. Here the effect on employees will be far greater -- thousands will lose their jobs. The Board's observation that the "net impact on the industry's employees will be a favorable one" (Order 75-5-25, p. 18) displays a singular insensitivity to

the effect on the employees actually involved -- those who have devoted their entire working careers to Air Express. The fact is that the effect on REA employees will involve severe dislocation. Fifteen thousand families will lose their chief source of employment -- and it is certainly no answer to them to say that, "Never mind, others will profit from what you have lost."

The basic effect of the termination of Air Express is to benefit the air freight forwarders and their employees. It is they who will succeed to the business and jobs provided by Air Express. In such a situation equitable principles, and labor protective considerations, mandate the following conditions: (1) that Air Express be continued until if and when a clearly superior service is developed to replace it; (2) if such a service is developed, REA and its Air Express employees be permitted to perform it; and (3) at a minimum, a stay be granted until such time as judicial review of the propriety of the Board's action is completed. Short of such provisions, REA's employees will be irreparably harmed, through no fault of their own, contrary to the Board's policy of appropriate labor protective conditions.

D.

REA's creditors will suffer irreparable injury. REA owes approximately $7.6 million to the airlines, and also has hundreds of other general creditors. The latter include small businesses such as gasoline stations and repair shops. Such businesses naturally are dependent on REA's business, and payment for their services. Without such payments, many may be forced out of business. They, too, have a very great interest in a stay of the Board's action pending judicial review. REA made a $400,000 profit in March and it appears that it also made a substantial profit in April. The jeopardy in which the Board's action places creditors therefore is entirely unnecessary. Further, twenty-four airlines have indicated their support to an extension of Air Express beyond that granted by the Board. The interests of these airlines, as unsecured creditors of REA as well as partners in the Air Express enterprise, would certainly be irreparably injured if the stay is not granted.*

---

*The statement in Order 74-5-25 that the four carriers not supporting the extension "account for 35 percent of all air express traffic" gives the misleading impression that without them Air Express traffic would automatically drop by 35%. Such is not the case. The 35% figure results from the division of traffic under the Air Express Agreement. Without the four carriers in question, most of the traffic would be handled through other airlines. In addition, the four carriers in question have indicated that their decision was based mainly on financial considerations, and that they will reevaluate their decision if Air Express is extended.

E.

In time of fuel crisis and pollution problems, when federal agencies are under a mandate to prepare detailed statements considering the effect on the environment of "major Federal actions significantly affecting the quality of the human environment" (42 U.S.C. §4332), an order which contains no such statement and has the effect of requiring the increased use of trucks to provide service to, from and on airports throughout the United States would cause irreparable damage to the environment, and should not be implemented without the opportunity of judicial review.

F.

If REA is forced out of business by the termination of Air Express, its nationwide surface express service, which is required by shippers throughout the nation will also cease to exist. In Northern Freight Lines v. United States, 304 F. Supp 536 (N.D. Ga. 1969), affd., 397 U.S. 247 (1970), the court affirmed the Interstate Commerce Commission's ruling that REA should have larger terminal areas than motor carriers because it is truly unique. The Court emphasized the shipping public's reliance on REA for surface transportation (304 F. Supp. at 542):

> "REA continues to meet the special needs of shipper dependence of REA service. This public dependence is based on many factors: REA's delivery service...; its single carrier nationwide coverage...: the simplicity of its rate structure for small shipments...;its ability to handle items, often at no extra charge, which necessitate protective services...; its expedited handling of small shipments of the minimum charge category, a service 'not readily available elsewhere'...; its flexibility in modifying terminal areas to meet industrial relocation in suburban and outlying areas outside MC-37 zones and beyond previously established express areas...; its dependable willingness to take items of high value, danger or perishability...."

The shippers who rely on surface express for the above services will have no reasonable recourse if Air Express is terminated on July 31 and REA is destroyed as a transportation system.

G.

The granting of a stay can only be beneficial to the public interest. Order 73-12-36 found that the proposal the Board was adopting would "allow REA and other forwarders to serve all or most of the market, probably at somewhat higher rates." (p. 4) The service proposed in Order 73-12-36 not only will be inferior to current service, and at higher rates, but also will deprive some communities and particular segments of traffic of all service.

No comparable alternative to Air Express service presently exists, and shippers have overwhelmingly said that they require the service they are now receiving from Air Express. A stay pending judicial review will promote the public interest by continuing the superior and extensive service and coverage the shippers are now receiving and delaying the as yet unplanned and undesigned inferior service they would receive - at what higher rates no one can guess - if Air Express were terminated.

The facts of record show that a stay would result in continuation of the status quo, a status quo found desirable by all the shippers who testified, which has continued for forty years, and which REA and the airlines have agreed to continue. The forwarders can hardly be substantially harmed by a stay that embodies continuation of the very circumstances under which they originated and have developed. Failure to grant such a stay would involve a confiscation of property and job interests without due process of law.

H.

Order 75-5-23 requires REA and the airlines to discuss the issues of retroactive divisions. These meetings will be an exercise in futility if the Court reverses the

Board's orders. The parties can hardly be expected to agree if the very basis of the meetings is an unresolved legal question under judicial review. That order, therefore, also should be stayed pending such review.

I.

It is essential that REA receive prompt action on its request for a stay. If a stay is to be granted or not, the shippers need to be so advised well before July 31 so that they can make their plans accordingly. Further, the deterioration in the volume of Air Express shipments, as the July 31 date draws closer, must be stopped at the earliest possible time, in view of REA's critical financial situation.

Expeditious action therefore is requested. To prevent REA and its employees, as well as the shippers, from suffering irreparable injury, REA will need to apply for a stay in Court in a timely manner if the Board does not

act favorably upon this motion. So that the Court will have adequate time to act well before the July 31 termination date, and protect Air Express business from further deterioration caused by that date, our plan would be to file such application with the Court on or about June 17, 1973. We therefore request Board action prior to that date.

WHEREFORE, REA Express, Inc. requests that the Board expeditiously stay the effect of Orders 74-5-25 and 74-5-23 pending completion of judicial review and for 60 days thereafter.

Respectfully submitted,

Arthur M. Wisehart

Of Counsel

Peter G. Wolfe

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the above motion to be served upon the parties to Docket 22387 and 22388 by first-class mail.

Peter G. Wolfe

May 24, 1974

860 (a)

JOINT COMMITTEE AIR EXPRESS

Co-Chairmen:
ROBERT H. REED for the Airlines
J. A. TETER for REA Express
Secretary:
G. J. GODBOUT

April 19, 1974

JOINT COMMITTEE MEMORANDUM NO. 5

TO: Joint Committee for Air Express

SUBJECT: NEGOTIATION SESSION PROGRESS REPORT AND UPDATE OF REA FINANCIAL POSITION

REA Express and several air carriers have requested that information concerning the negotiating meeting held on March 28, 1974 be distributed. The report follows. REA has requested that this information be disseminated to all appropriate and interested officials of the airlines.

A. Weekly Advance Payments and Debt Payment Schedule

A memorandum of understanding, copy attached, was signed by Tom Kole for REA and Otto Becker as Chairman of the airlines Negotiating Committee. The memorandum provides for REA to continue weekly advance payments to the airlines through January 31, 1975. This is subject to the Board granting an extension to that date.

Subject to a further extension beyond January 31, 1975, the memorandum provides for a continuation of the weekly advance payments and a monthly schedule through June 1975 for repayment of the December 1973 amount due the carriers. The current amendment to the agreement provides for a return December 31, 1974 to the former payment schedule under which weekly advance payments would cease and the amount for December would be due as a lump sum payment January 30, 1975. This will effectively reduce the airlines exposure steadily each week until July 1975 when REA will commence paying the air carriers their share of air express revenue every 15 days.

B. Termination Clause

Language was developed, copy attached, which would establish the Air Express Agreement as a "continuous" document rather than one of a five-year duration. Airlines or REA would have the right to withdraw on the anniversary date by giving one year's notice.

C. Payment for Receipt and Delivery of Air Express From or To the Public

REA has agreed to pay a minimum of $2.00 per waybill to the airlines performing origin or destination handling of air express where REA does not have airport offices nor personnel. This will start 30 days after CAB action on the petition for extension of the termination date.

D. Tariff Approach

General agreement was reached on changing the current Door to Door tariff structure to a concept of an airport to airport charge and a REA pick-up and/or delivery charge for air express shipments. Specifics as to the applicable cost related factors will be developed by the Tariffs Subcommittee. It is contemplated that a revised tariff would be filed shortly after approval of the Air Express Committee.

E. Substitute Service

An ad hoc group was appointed to develop procedures for handling and payment for substitute service which does not penalize the air carrier. (The ad hoc group has met and a report will be given at the next meeting of the Negotiating Committee).

F. Tariff Publishing Agent

After review of costs and operation of the tariff publishing agent, it was agreed that Tom Miano of REA should retain this function. Provisions would be inserted into the agreement which will require written concurrence from both parties on any changes to the Air Express tariff. The title of the person authorized to sign for the airline parties would also be inserted in the Agreement.

In addition, Mr. Kole will give written instructions to Mr. Miano concerning these provisions, a copy of which will be given to the air carriers.

G. Next Meeting

The next meeting of the Negotiating Committee is scheduled Tuesday, April 23, 1974, at REA Headquarters in New York. Discussions are planned on a marketing plan and further discussion will be held on the proposed tariff approach.

UPDATE OF REA FINANCIAL POSITION

(A) In February they had a profit of $500,000, primarily because of the sale of some stock valued at approximately $1 million. They had originally projected $500,000 loss from operations.

(B). In March they hit their projected $570,000 profit from operations.

(C) They are current on all Air Express COD payments.

(D) They remain current on their repayment schedule to the air carriers. They remain current on advance payments to the air carriers.

G. J. Godbout
Secretary

GJG/jw
Attachment

MEMORANDUM OF UNDERSTANDING BETWEEN REA EXPRESS AND THE AIRLINES NEGOTIATING COMMITTEE

(1) If the CAB grants extension of the effective date of its Order in the Express Service Case from June 5, 1974, to January 31, 1975, REA Express will continue to make advance payments to the airlines through January 31, 1975.

(2) If the CAB permits air express service to continue beyond January 31, 1975, under a revised agreement, REA Express and the airlines will amend the debt payment schedule to provide for a continuation of the existing prepayment, principal payments, and interest payments on the remaining debt through June, 1975. Commencing with July, 1975, REA will pay the airlines their share of air express revenues on a semi-monthly basis as follows: on the 31st of each month REA will pay the airlines for the first fifteen days of that month, and on the 15th day of each month REA will pay the airlines for the balance of the preceding month.

Executed this 28th day of March, 1974.

REA Express

by _____

Airlines Air Express Negotiating Committee

by _____

TERMINATION CLAUSE

This agreement shall be of continuous duration, subject to the right of REA Express and/or any airline party to terminate its participation in this Agreement effective upon any anniversary date of this Agreement by serving upon all other parties to the Agreement at least twelve months prior to such termination date written notice of such determination to terminate. Any party receiving such notice shall have the right within thirty days after such receipt to serve upon all other parties its notice of termination effective upon the same anniversary date.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- -x

REA EXPRESS, INC.,

Petitioner,

- v -

CIVIL AERONAUTICS BOARD,

Respondent.

- -x

No. 74-1611
AMENDED PETITION FOR REVIEW

REA Express, Inc., Petitioner, hereby amends its petition filed May 7, 1974 for review of Orders 74-5-23, 74-5-24, 74-5-25 and 74-4-1 of the Civil Aeronautics Board, and related Orders 73-12-36 and 74-2-118, to add Order 74-5-74, issued by the Board on May 14, 1974, subsequent to the date of the original petition, but directly related to and in the same C.A.B. Docket as Order 74-4-1 and 74-2-118 covered by the original petition.

Dated: New York, New York

May 31, 1974

Respectfully submitted,

Arthur M. Wisehart
219 East 42nd Street
New York, New York 10017
Attorney for Petitioner
REA Express, Inc.

Of Counsel:

John J. C. Martin
Peter G. Wolfe
219 East 42nd Strect
New York, N.Y. 10017

Anderson, Russell, Kill & Olick
600 Fifth Avenue
New York, New York 10020

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PETER G. WOLFE, being duly sworn, deposes and says that on the 31st day of May, 1974, he served the foregoing Amended Petition for Review upon all parties who have been admitted to participate in the related proceedings before respondent Civil Aeronautics Board, by causing a true copy to be mailed in the U.S. Mail, postage prepaid, to said parties at the addresses appearing below:

Air Canada
600 Madison Avenue
New York, N.Y. 10022

Airlift International, Inc.
International Airport
Miami, Florida 33148

Air West, Inc.
San Francisco International Airport
San Francisco, California 94128

Alaska Airlines, Inc.
Seattle-Tacoma Int'l Airport
Seattle, Washington 98158

Allegheny Airlines, Inc.
Hanger 12,National Airport
Washington, D. C. 20001

Continental Air Lines, Inc.
International Airport
Los Angeles, California 90009

Delta Air Lines, Inc.
Atlanta Airport
Atlanta, Georgia 30320

Eastern Air Lines, Inc.
10 Rockefeller Plaza
New York, New York 10020

The Flying Tiger Lines,Inc.
International Airport
Los Angeles, California 90009

American Airlines, Inc.
633 Third Avenue
New York, N.Y. 10017

Aspen Airways, Inc.
Stapleton Int'l Airport
Denver, Colorado 80207

Braniff Airways, Inc.
Braniff Tower
P. O. Box 35001 Exchange Park
Dallas, Texas 75235

Caribbean-Atlantic Airlines,Inc.
P.O. Box 6035, Loisa Station
Santurce, Puerto Rico 00914

Compagnie National Air France
1350 Avenue of the Americas
New York, N.Y. 10019

Pan American World Airways, Inc.
Pan Am Building
New York, New York 10017

Piedmont Aviation, Inc.
Smith Reynolds Airport
Winston-Salem, N.C. 27102

San Francisco and Oakland Helicopter Airlines, Inc.
Metropolitan Oakland Int'l Airport, Box 2525
Oakland, California 94164

Frontier Airlines, Inc.
5900 E. 39th Avenue
Denver, Colorado 80207

Los Angeles Airways,Inc.
5921 W. Imperial Highway
Los Angeles, Calif. 90045

Mohawk Airlines, Inc.
Oneida County Airport
Utica, New York 13503

National Airlines, Inc.
P.O. Box 2055
Airport Mail Facility
Miami, Florida 33159

New York Airways, Inc.
LaGuardia Airport Station
Flushing, New York 11371

North Central Airlines, Inc.
6201 34th Ave. South
Minneapolis, Minn. 55450

Northeast Airlines, Inc.
Logan Int'l Airport
Boston, Mass. 02128

Northwest Airlines, Inc.
Minneapolis-St. Paul Int'l
Airport
St. Paul, Minn. 55111

Ozark Air Line, Inc.
Box 10007, Lambert Field
St. Louis, Missouri 63145

Russell S. Bernhard
1625 K Street, N. W.
Washington, D. C. 20006

Aero Special Air Freight,
Inc.
William R. Kraham
Watergate Six Hundred
Washington, D. C. 20037

BOR-Air Freight Company,
Inc.
Paul Reiber
1625 Eye Street, N. W.
Washington, D. C. 20006

Seaboard World Airlines, Inc.
Seaboard World Bldg.
John F. Kennedy Int'l Airport
Jamaica, N.Y. 11430

Southern Airways, Inc.
Atlanta Airport
Atlanta, Georgia 30320

Texas International Airlines,
Inc.
W. P. Hobby Airport
Houston, Texas 77060

Trans Caribbean Airways,
Inc.
714 Fifth Avenue
New York, N.Y. 10019

Trans World Airlines, Inc.
605 Third Avenue
New York, N.Y. 10016

United Air Lines, Inc.
P.O. Box 66100
Chicago, Illinois 60666

Western Air Lines, Inc.
6060 Avion Drive
Los Angeles, California
90009

Air Freight Forwarder
Association
Louis P. Haffer
Robert N. Meiser
1730 Rhode Island Avenue, N.W.
Washington, D. C. 20036

Trans-Air Freight System, Inc.
Robin Steiner
153-40 Rockaway Boulevard
Jamaica, New York 11434

United Parcel Service Company
Paul Y. Seligson
2021 L Street, N. W.
Washington, D. C. 20036

Wells Fargo Air Express, Inc.
Robert W. Oliver
1100 Connecticut Avenue, N. W.
Washington, D. C. 20036

C. F. Air Freight, Inc.
John L. Richardson
Suite 1100
1660 L Street, N.W.
Washington, D. C. 20036

Domestic Air Express, Inc.
Alan F. Wohlstetter
One Farragut Square South
Washington, D. C. 20006

Emery Air Freight
Corporation
Jerry W. Ryan
1100 Connecticut Avenue
N. W.
Washington, D. C. 20036

Imperial Air Freight
Service, Inc.
Henry Jerum
151 Oliver Street
Newark, New Jersey 07105

J. E. Bernard & Co., Inc.
Arthur D. Bernstein
1054 - 31st Street, N. W.
Washington,D. C. 20007

Jet Air Freight
Gary L. Zimmerman
Suite 201
9100 Wilshire Boulevard
Beverly Hills, California
90212

Southern Pacific Air Freight,
Inc.
Richard P. Taylor
1250 Connecticut Avenue, N.W.
Washington, D. C. 20036

Bureau of Operating Rights
Jerome B. Blum
1825 Connecticut Avenue, N. W.
Washington, D. C. 20428

Federal Express Corporation
Nathaniel P. Breed, Jr.
Hale, Russell & Stentzel
1001 Connecticut Ave. N.W.
Washington, D. C.

Society of American Florists
William J. Augello
120 Main St.
Huntington, N.Y.

Wings and Wheels Express, Inc.
Joseph B. Goldman
Suite 900
1776 K Street, N. W.
Washington, D. C. 20006

Greyhound Van Lines, Inc.
Greyhound Lines, Inc.
Greyhound Corporation
Robert D. Rierson
10 South Riverside Plaza
Chicago, Illinois 60606

National Industrial Traffic
League
Frederic L. Wood
914 Washington Building
Washington, D. C. 20005

National Small Shipments Traffic
Conference and Drug and
Toilet Preparations Traffic
Conference
Eastern Industrial Traffic
League
Allied American Bird Company
William Q. Keenan
233 Broadway
New York, New York 10007

Department of Defense
Captain Richard A. Peterson
Regulatory Law Office
Office of the Judge Advocate
General
Department of Army
Washington, D. C. 20310

Allied American Bird Company
John Wilson
% Hartz Mountain Products
50 Cooper Square
New York, New York 10003

Hawaii Air Cargo Shippers
Association, Inc.
Merill Armour
806 15th St. N.W.
Washington, D. C. 20005

ITOFCA, Inc.
Charles W. Singer
33 North Dearborn St.
Chicago, Ill. 60602

American Kennel Club
Leila Sears
51 Madison Ave.
New York, N.Y.

National Air Transportation
Conferences, Inc.
Seamon, Sullivan & Wasko
733 15th St.
Washington, D. C.

U. S. Department of
Commerce
Washington, D. C.

U. S. Department of Defense
Washington, D. C.

U. S. Department of
Transportation
Washington, D. C.

U. S. Department of Justice
Washington, D. C.

Department of U. S. Postal
Service
Washington, D. C.

Aquarium Supply Company
Marshall Meyers
1133 15th St. N. W.
Washington, D. C. 20005

R. Robert Popeo
Charles River Breeding
Laboratories
One Center Plaza
Boston, Mass. 02108

Fabulous Felines, Inc.
Milan Greer
133 Lexington Ave.
New York, N.Y. 10016

Kennel Review
Mrs. Janet G. Finney
1915 Eastridge Way
Brea, Calif. 92621

Puget Sound Traffic Association
H. E. Franklin
215 Columbia St.
Seattle, Wash. 98104

Raytheon Co.
Ralph G. Driscoll
R. C. Raytheon
141 Spring St.
Lexington, Mass.

Western Regional Floral
Traffic Conference
C. J. Van Duker
P. O. Box 3390
Rincorn Annex
San Francisco, Calif.

County of Allegheny, Pa.
Walter S. Feeney
Asst. County Solicitor
401 County Office Bldg.
Pittsburgh, Pa. 15219

Brown County, Wisc.
Robert R. Flatley
Corporation Counsel
Court House
Green Bay, Wis. 54301

City of Dallas Tex.
Dallas Chamber of Commerce
City of Fort Worth, Tex.
Fort Worth Chamber of
Commerce
Kenneth C. Dippel
501 City Hall

Dallas Tex. 75214

City of Dayton, Ohio
Dayton Area Chamber of
Commerce
Edward MacNeal
11 West Ave.
Wayne, Pa. 19087

Friendship International
Airport Authority
Chamber of Commerce of
Metropolitan Baltimore
Dept. of Transportation of
the State of Maryland
Frank Potter
22 Light Street
Baltimore, Md. 21202

Green Bay Area Chamber of Commerce
Gene A. Summerfield
Manager
Transportation Div.
P.O. Box 969
Green Bay, Wis. 54301

State of Hawaii
Nobuki Kamida
Deputy Attorney General
Hawaii State Capitol
415 S. Beretania St.
Honolulu, Hawaii 96813

City of Kansas City, Mo.
Chamber of Commerce of Greater Kansas City
Nordahl E. Holte
2800 City Hall
Kansas City, Mo. 64106

Louisville & Jefferson County Air Board
T. Kennedy Helm, Jr.
1112 Kentucky Home Life Bldg.
Louisville, Ky. 40202

Massachusetts Port Authority
Richard P. Taylor
Steptoe & Johnson
1250 Connecticut Ave. N.W.
Washington, D. C. 20036

City of Memphis, Tenn.
Memphis Area Chamber of Commerce
Raleigh-Durham Airport Authority
City of San Jose, Calif.
Joseph D. Sullivan
700 Woodward Bldg.
Washington, D. C. 20005

Wien Consolidated Airlines, Inc.
O. Victor R. Davis
Box 6247
International Airport
Anchorage, Alaska 99502

Wings and Wheels Express, Inc.
John C. Wisener
Cargo Bldg. No. 89
JFK International Airport
Jamaica, N.Y. 11430

Allied American Bird Company
Florida Tropical Fish Industries
National Retail Pet Supply Association
Tampa Livestock Distributors
United Pet Dealers Association
Western Wholesale Pet Supply Association
John Wilson
700 South 4th St.
Harrison, N.J. 07029

American Dog Owners Association
Duncan G. Wright
Box 35176
Detroit, Mich. 48235

American Retail Federation
C. Washer
1616 H St. N.W.
Washington, D. C. 20006

County of Milwaukee, Wisc.
Metropolitan Milwaukee Association of Commerce
Robert P. Russell
Corporation Counsel
Room 207
Courthouse,
Milwaukee, Wis. 53233

Pennsylvania Public Utility Commission
Lawrence T. Joyce
P. O. Box 3265
Harrisburg, Pa. 17120

Tampa Bay Area Parties
(Counties of Hillsborough and Pinellas, Fla.
the City of Tampa and the Greater Tampa Chamber of Commerce)
Don W. Crockett
1001 Connecticut Ave. N.W.
235 Washington, D. C.

City of Toledo, Ohio
Toledo Area Chamber of Commerce
John A. DeVictor, Jr.
Asst. Director of Law
City of Toledo
327 Safety Bldg.
Toledo, Ohio 43624

State of Wisconsin
George B. Schwahn
Asst. Attorney General
State Capitol
Madison, Wisc.

Air Freight Motor Carriers
Conference
Thomas M. Knebel
917 Munsey Bldg.
1329 E. St. N.W.
Washington, D. C. 20004

Civil Aeronautics Board
Richard Littell
General Counsel
Washington, D. C. 20428

Peter G. Wolfe
PETER G. WOLFE

Sworn to before me this

31st day of May, 1974.

Geraldine M. French

GERALDINE M. FRENCH
Notary Public, State of New York
No. 03-1315960
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1975

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REA EXPRESS, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	
CIVIL AERONAUTICS BOARD,	:	No. 74-1611
	:	
Respondent.	:	

STIPULATION

REA Express, Inc. and the Civil Aeronautics Board, petitioner and respondent respectively in the above-entitled case hereby stipulate pursuant to Rule 17(b) F.R.A.P. to file neither the administrative record nor a certified list thereof in this case.

Arthur M. Wisehart
for REA Express, Inc.

Glen M. Bendixsen
for Civil Aeronautics Board

Dated: June 14, 1974

Order 74-6-117

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.
on the 26th day of June, 1974

INVESTIGATION OF AIR EXPRESS RATES	:	DOCKET 22387

ORDER DENYING MOTION FOR STAY

By Order 74-5-23, entered in the above captioned proceeding, the Board found, inter alia, that the issue of the lawful future rates for air express service had been rendered moot by its decision in the Express Service Investigation (Order 73-12-36) to terminate REA's exemption authority to conduct air express service. In addition, the Board found that although the issue of whether it should attempt to retroactively redistribute between REA and the direct air carriers air express proceeds for prior periods was still ripe, the record and analyses developed by the parties on this issue was far from adequate for an informed judgment as to what the just, reasonable, and equitable divisions would be, or as to the Board's jurisdiction to prescribe such divisions. In this posture, the Board found it appropriate to request the interested parties to meet under the chairmanship of the Director of the Bureau of Economics, and to endeavor to reach agreement "with respect to such matters as the detailed air express traffic and revenue data for calendar years 1971, 1972, and 1973; methods of evaluating the divisions made under the formula outstanding during the period April 1970 forward; and, ..., an overall conclusion on the appropriate divisions for the period."[1/]

REA has now filed a motion requesting that the Board stay Order 74-5-23 pending completion of judicial review.[2/] Answers

1/ Order 74-5-23 at 9.

2/ REA's Motion also seeks a stay of the Board's decision in the Express Service Investigation, Docket 22388. By Order 74-6-118, the Board denied the Motion as applied to the Service proceeding.

to the motion have been filed by the airlines participating in air express service ("Airlines"), Emery Air Freight Corporation (Emery), the Air Freight Forwarders Association (AFFA), and the Pet Industry Parties (Pet). 3/

Upon consideration of the motion and answers, the Board has determined for the reasons set forth below to deny the request. While REA apparently seeks a stay pending judicial review of the Board's order, it does not articulate the reasons why a stay is warranted, and we are unable to find that a stay is appropriate.

The Rates proceeding order which REA now seeks to stay principally involves two distinct findings: first, that the issue of lawful future express rates is moot as a result of the decision to terminate REA's express monopoly; and second, that the existing record is inadequate for determination of the issue of retroactive redistribution of express revenues from prior periods and that further procedures are necessary. REA's motion completely fails to support any claim that either of these two findings will result in any irreparable injury to REA. Accordingly, we cannot find any basis for grant of the stay. In addition, the findings on the state of the record with respect to retroactivedivisions do not constitute a final order of the Board on this issue and, therefore, are not ripe for judicial review. Hence, no basis for a stay pendente lite of this aspect of the order exists.

In our original order, we had sought to promote resolution of a number of issues underlying the retroactivity question through discussions between the interested parties. A meeting for this purpose had been scheduled for May 28, 1974, but was subsequently canceled at the suggestion of counsel for REA, who expressed the opinion that the meeting might not be productive in view of the pendency of the motion for stay. The Airlines in their answer took note of the cancellation of the meeting and suggested that rather than proceed with a meeting in accordance with the procedure outlined in Order 74-5-23, the Board first direct the parties to file briefs directed to the jurisdictional issue, and to consider the remaining issues only if the Board decides that it has jurisdiction.

3/ On June 11, 1974, REA filed a reply to the answers of Emery and AFFA accompanied by a Motion For Leave To File An Otherwise Unauthorized Document. We will grant REA's motion.

We do not agree. There are several different resolutions that can be made of the retroactive redistribution issue regardless of the ultimate finding on the jurisdiction issue. Accordingly, for the foregoing reasons as well as the reasons expressed in Order 74-5-23, we will direct a rescheduling of the meeting in accordance with the procedures outlined in our previous order. The procedural dates will be determined by the Bureau Director.

ACCORDINGLY, IT IS ORDERED THAT:

1. REA's motion for stay of Order 74-5-23 be and it hereby is denied.

2. The ordering paragraphs of Order 74-5-23 be amended to read as follows:

"1. An informal conference be convened by the Director, Bureau of Economics, for the purpose of assembling factual material and attempting to reach agreement on the divisions of revenues pursuant to operations conducted under Agreements CAB 12866 and CAB 17935, as amended, as set forth in Order 74-5-23;

"2. At the termination of the conference by the Director, he shall forthwith file with the Board a report, accompanied by such stipulations as have been agreed upon by parties to the CAB agreements cited in paragraph one; and

"3. If the parties to the above-listed CAB agreements cannot reach agreement on a stipulation of the divisions of revenue prior to the termination of the conference, the Director shall establish a procedural timetable for the filing by the parties with the Board of briefs and reply briefs addressed to the issues discussed in Order 74-5-23."

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND
Secretary

(SEAL)

Order 74-6-135

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 28th day of June, 1974

Priority air freight rates proposed by :	
:	Docket 26837
DELTA AIR LINES, INC. :	
SOUTHERN AIRWAYS, INC. :	

ORDER OF INVESTIGATION AND SUSPENSION

By tariff filings marked to become effective July 1 and 15, 1974, Delta Air Lines, Inc. (Delta) and Southern Airways, Inc. (Southern), respectively, propose premium airport-to-airport rates (called "air express rates") for priority freight service. The proposals, which are identical, involve the charging of a premium of 30 percent above standard rates for shipments accorded "priority of carriage before the loading of other air freight shipments" except small packages. The premium of 30 percent applies to general and specific bulk commodity rates for regular air freight shipments. The tariffs are marked to expire with November 30, 1974.

In supporting their proposals, and in Delta's answer to a complaint, the carriers variously assert, inter alia, that (1) their proposals are the result of their withdrawal from participation in the express service provided by the airlines and REA Express, Inc. (REA); (2) the Board desires that the carriers provide a priority airport-to-airport service to take the place of air express; and (3) the rates are cost justified.

A joint complaint against Delta and REA was filed by The National Small Shipments Traffic Conference, Inc. (National), Drug and Toilet Preparation Traffic Conference, and The Eastern Industrial Traffic League, 1/ and a complaint against Southern's proposal by National. These complaints request that the Board investigate and suspend the proposed rates, and order Delta to continue to participate in the air express system by postponing cancellation in the air express tariff until the airline industry presents to the Board and the public a "viable" method of continuing the transportation of air express traffic.

1/ A letter informally protesting Delta's proposal was received from the Hawaii Air Cargo Shippers Association, Inc. It will be entered in the correspondence file of the investigation we are instituting herein.

The complaints assert that the services proposed are, in a number of ways, more restricted than the current air express service. The complaints also criticize the level of the proposed rates, claiming, inter alia, that the cost justifications are inadequate and that the rates proposed for the smaller sized shipments are above current air express rates.2/

Upon consideration of all relevant factors, the Board finds that the tariff proposals may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the tariffs should be suspended pending investigation.

Although the shipper is to be charged an additional 30 percent for "priority of carriage," the tariffs of Delta and Southern merely state that they "will be accorded priority of carriage before the loading of other freight shipments" except small packages. There is no guarantee that such priority will be meaningful in the sense that the service will in fact be "highly expedited," as the Board states the carriers are obliged to provide (see decision in Docket 22388, Express Service Investigation, Order 73-12-36, December 7, 1973, at page 17). The Board is of the opinion that a guarantee, involving a refund of the charges above the charges for standard service if the transportation on a specific flight is not furnished, is an essential part of the service proposed by the carriers in order to warrant a premium. In view of the fact that both Delta and Southern have withdrawn, effective June 14, from participation in the air express tariff, it is necessary that both carriers begin offering a priority service as rapidly as possible. Consequently, the Board will be receptive to an application to place in effect expeditiously a priority service embodying the foregoing refund provision. 2a/

As indicated above, one of the complaints requests that the Board require Delta to participate in the air express sytem by postponing withdrawal of its cancellation of participation in the air express tariff. We do not believe that this is practicable. In this regard, in Order 73-12-36, the Board stated, "It is probably true that the Board could license REA to operate independently of an airline-REA agreement, and could compel the airlines to publish an express service tariff covering rates to REA. But, absent an agreement between the parties, there is no way to insure that the airlines will be willing to continue performing all of the

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2/ In its answer to the complaint, REA states that, in accordance with instructions issued by the Air Transport Association, it was required to join in filing a special tariff permission to permit the filing of a tariff cancelling service to points served by Delta and other airlines, but now it joins with the shippers in opposing the proposed changes by Delta. REA also asserts that the Delta proposal constitutes an unfair method of competition in that the service is called "air express" whereas it is quite different from the current air express, resulting in confusion of the shipping public and erosion of REA's Goodwill. REA finally declares that (1) Delta is not now performing its certificate obligation to provide adequate service in accordance with the Act and with Board Order 73-12-36, which requires the airlines to provide coordinated interline priority service; and (2) the Board must enter orders compelling compliance with the foregoing requirements.

2a/ Of course, the carriers would be expected to cost justify fully the rates for any revised service proposed.

ground services at those airports--85 percent of the total--where REA has no airport offices." In view of all the circumstances, the request will be denied.3/

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a) and 1002 thereof,

IT IS ORDERED THAT:

1. An investigation is instituted to determine whether the provisions in Rule No. 72 on 4th and 5th Revised Pages 38-D of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 169, and rules, regulations, and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions in Rule No. 72 on 4th and 5th Revised Pages 38-D of Airline Tariff Publishers, Inc., Agent, Tariff C.A.B. No. 169, are suspended and their use deferred to and including September 28, 1974, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, the joint complaint of The National Small Shipments Traffic Conference, Drug and Toilet Preparation Traffic Conference, and The Eastern Industrial Traffic League in Docket 26796, and the complaint of The National Small Shipments Traffic Conference in Docket 26820 are dismissed;

4. The proceeding herein, designated Docket 26837, be assigned before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

5. Copies of this order shall be filed with the tariffs and served upon Delta Air Lines, Inc., Southern Airways, Inc., The National Small Shipments Traffic Conference, Drug and Toilet Preparation Traffic Conference, and The Eastern Industrial Traffic League, and REA Express, Inc., which are hereby made parties to Docket 26837.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)

3/ Delta is participating in discussions held for the purpose of devising an inter-carrier priority service. The carrier states that it hoped this service could be implemented by August 1, 1974, when the current air express service is scheduled to expire and that it wishes to provide an online priority service at the earliest possible date (the participation of both Delta and Southern in the tariff having terminated on June 14) and to continue until the inter-carrier service is implemented. Delta also asserts that a short hiatus between the old and new air express is desirable to prevent confusion, to purge the system of old air express traffic, and to acquaint personnel with the new service.

Order 74-6-136

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by The Civil Aeronautics Board
at its office in Washington, D. C.
on the 28th day of June, 1974

Priority reserved air freight rates proposed by WESTERN AIR LINES, INC.	Docket 26838

ORDER OF INVESTIGATION

By tariff revision marked to become effective July 5, 1974, Western Air Lines, Inc. (Western) proposed premium rates for a "Priority Reserved Freight" service, which applies to general commodity-rated traffic. The rates would amount to 130 percent of the currently applicable general commodity rates. The shipper is provided a reservation which is defined as a commitment by the carrier to transport a predetermined volume of freight on a specific flight. The reservation must be completed with the carrier prior to acceptance of the shipment and the shipment must be tendered to the carrier at the air freight terminal at least 60 minutes prior to the scheduled flight departure. The shipper is charged for the total volume reserved, whether or not actually tendered, on the basis of actual weight of the shipment or its cubic density at 10 pounds per cubic foot. However, if the unutilized space does not exceed 10 percent of that reserved, the charge will be only for the actual or cubic weight shipped.

If the shipment is not delivered on the specified flight on which the reservation is made, the carrier will refund to the shipper the difference between the proposed rates and the applicable rates for standard service, unless such misdelivery is caused by weather conditions, mechanical delay of the aircraft, etc. Freight tendered to the carrier in excess of the predetermined volume reserved by the shipper may, subject to the carrier's discretion, be accepted on a nonpriority basis to be transported at the otherwise applicable rates.

In support of its proposal and in answer to the complaint discribed below, Western asserts, inter alia, that, although its proposed service is consistent with the Board's admonition (Order 73-12-36) to provide an expedited service, its current proposal is not intended to serve as a substitute for current air express service.

The carrier further states that, while it is extremely difficult to approximate the costs of implementing the service, the rates proposed are

justified by costs and/or value of service; that "manpower and value of service would account for roughly 71 percent of the added costs" for the proposed priority service and other costs (such as for taxes, materials, etc.), the remainder. Western forecasts that, based on its 1973 actual freight revenue, without considering inflation factors, the costs of the priority service would be $810,000 for the first year and revenues $900,000.

A complaint requesting investigation and suspension of Western's proposal was filed by The National Small Shipments Traffic Conference, Inc. (National). 1/ The complaint asserts that the proposal is a haphazard attempt to replace the current air express and that the proposal should be suspended pending the completion of the carrier meetings concerning the establishment of an industry-wide priority air cargo service. The complaint further claims, inter alia, that the proposal places burdens upon shippers in making reservations, completing waybills, arranging for pickup and delivery, etc.; and that the following provisions in the tariff are unreasonable: the proposed cubic density of 10 pounds per cubic foot as a basis for computing the premium of 30 percent, the rule proposed for freight in excess reserved volume, the rule requiring payment of charges for the amount reserved, and the exclusion of certain services (attendants accompanying a shipment, etc.).

Upon consideration of all relevant factors, the Board finds that Western's tariff proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated.

While we shall permit the carrier's proposal to become effective pending investigation, the question remains whether the proposed service is subject to unreasonable and discriminatory limitations and provisions and whether it is consistent with the Board's finding that the carrier is under an obligation to offer highly expedited priority service available for all commodities now carried in air express (Order 74-2-118, February 27, 1974), but the instant proposal is confined to general commodities and has a minimum charge equal to the charge for a 100-pound shipment.

1/ The complaint was accompanied by a motion for leave to file a late formal complaint. Inasmuch as the carrier's tariff was refiled on a later date, the Board is considering the complaint and answer thereto as related to the refiled proposal and the motion has become moot.

881 (a)

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

IT IS ORDERED THAT:

1. An investigation is instituted to determine whether the charges and provisions in Rule No. 71 on 3rd, 4th and 5th Revised Pages 38-C and reissues thereof of Tariff C.A.B. No. 169 issued by Airline Tariff Publishers, Inc., Agent, and rules, regulations, or practices affecting such charges and provisions are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful charges and provisions and rules, regulations, and practices affecting such provisions;

2. Except to the extent granted herein, the complaint of The National Small Shipments Traffic Conference, Inc., in Docket 26787, is dismissed;

3. The proceeding herein, designated Docket 26838, be assigned before an Administrative Law Judge of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be served upon Western Air Lines, Inc., and upon The National Small Shipments Traffic Conference, which are hereby made parties to Docket 26838.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

EDWIN Z. HOLLAND

Secretary

(SEAL)

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D.C.

REA EXPRESS, INC., Complainant, v. AIR CARRIERS PARTICIPATING IN OFFICIAL AIR EXPRESS TARIFF NO. 1, Respondents.	Docket

PETITION OF REA EXPRESS, INC. TO REJECT TARIFFS

On April 24, 1974, May 16, 1974 and June 12, 1974, G. T. Miano, Agent, filed 22nd, 23rd and 24th Revised Power of Attorney List to Official Air Express Tariff No. 1, on behalf of the carriers participating in Air Express Service. REA Express, Inc. (REA) hereby requests that the Board reject the tariff filings on grounds that they violate Section 404 of the Federal Aviation Act and CAB Order 73-12-36.

In accordance with instructions issued by the Air Transport Association, REA, through its tariff agent, was required to join in the filing which removed Delta Airlines,

Inc., North Central Airlines, Inc., Northwest Airlines, Inc., and Southern Airways, Inc. as parties to Official Air Express Tariff No. 1.

REA believes these tariff filings should be rejected. The Board may reject tariffs which are in effect but are in conflict with applicable law or regulations. See Order 74-6-77 dated June 14, 1974. Order 73-12-36 found that the airlines must provide coordinated interline priority service, as part of their obligations to provide adequate service under Section 404(a) of the Federal Aviation Act. Air Express service, performed pursuant to Official Air Express Tariff No. 1, is the only existing coordinated interline priority service, and air carriers cannot be permitted to withdraw from Air Express pending judicial review of Order 73-12-36, which raises, among other questions, whether the Board could terminate Air Express without providing for an adequate replacement service. The revised power of attorney lists are in conflict with applicable law and must be rejected.

WHEREFORE, the Board should reject 22nd, 23rd and 24th Revised Power of Attorney Lists to Official Air Express Tariff No. 1.

Respectfully submitted,

Arthur M. Wischart
219 East 42nd Street
New York, New York 10017

Of Counsel:

Bert W. Rein
Kirkland, Ellis & Rowe
1776 K Street, N.W.
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the above petition to be served by first class mail upon the Air Transport Association, 1709 New York Avenue, Washington, D.C. 20006; Delta Air Lines, Inc., Atlanta Airport, Atlanta, Georgia 30320; North Central Airlines, Inc., 6201 34th Avenue South, Minneapolis, Minnesota 55450; Nortwest Airlines, Inc., Minneapolis-St. Paul International Airport, St. Paul, Minnesota; and Southern Airways, Inc., Atlanta Airport, Atlanta, Georgia 30320.

July 12, 1974

Peter G. Wolfe

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D.C.

REA EXPRESS, INC., Complainant, v. UNITED AIR LINES, INC., Respondent.	Docket

COMPLAINT OF REA EXPRESS, INC.

Pursuant to Rule 505 of the Board's Rules of Practice, REA Express, Inc. (REA) hereby files its complaint against Official Air Express Tariff No. AE-2, Airline Tariff Publishers, Inc., Agent, filed on behalf of United Air Lines, Inc. (United) for an effective date of August 1, 1974, and asks that the Board suspend and investigate such tariff and order United to adhere to the Air Express arrangement pending such investigation.

1. Failure To Provide Adequate Priority Service

As United states in its justification, the Board, in Order 73-12-36, ordered the airlines to provide priority cargo service as a replacement for Air Express, and as part

of its obligation to provide adequate service under Section 404 (a) of the Act. The Board said:

> "Some inter-airline coordination will be necessary . . . . (p. 39).

United ignores this language, and fails in its tariff to provide for such inter-airline coordination. Thus, under United's service, shippers will be given an on-line service, limited to the points on United's system.

In addition, the tariff fails to provide for service which will be an adequate replacement for Air Express. A simple comparison of the United tariff and Official Air Express Tariff No. 1 (attached) will show large discrepancies. Thus, aside from United's failure to provide pickup and delivery service, United (1) will not provide armed guard service (Air Express Tariff, Rule 25), (2) will not provide guaranteed same day service (Air Express Tariff, Rule 4.5), (3) will not accept shipments of extraordinary value and live animals without advance arrangements (United Tariff, Rule 18), (4) will not accept any shipments of certain live animals under any condition (United Tariff, Rule 20) and (5) excludes liability for United's own acts of negligence under certain conditions (United Tariff Rule 30). All of these show that United proposes to provide the public with a limited service far inferior to Air

Express, and therefore the United tariff violates Section 404 (a) of the Act.

Beyond these differences on the face of the tariff, the United and other on-line services will deny shippers the right they presently have to get their traffic on the first available flight, no matter which carrier is operating, at a uniform rate level. Instead, shippers will have to search out the schedules and tariffs of each carrier who provides such service and make their own interline connections. In fact, it is not clear from the tariff that United is in fact promising to provide priority service at all (United Tariff, Rule 46).

Thus, United's proposal fails to provide shippers who have used Air Express with the adequate replacement service they need.

2. Violation of the Air Express Agreement and Unfair Competition

United is still a party to the Air Express Agreement. United has served a notice of withdrawal from the Agreement, but that notice does not become effective until November 22, 1974. REA recognizes that the Board has ordered the termination of that Agreement. However, REA has filed a Petition for Review and a Motion For A Stay of the Board's order terminating that Agreement, and expects the Agreement to be continued. REA hopes that United will withdraw its tariff once the

stay is granted, but REA must protect its contractual and other legal rights pending that withdrawal. REA believes this is necessary to protect its interests in view of the Board's comments in Order 74-6-118, pp. 3-4, noting that REA filed no objection to prior tariff changes. In any event, the Agreement, which was approved by the Board under Section 412 of the Act, is still in effect. Section III(E) of that Agreement provides:

> "The Parties hereto will not use the term 'Air Express' in connection with any type of service in the United States or Puerto Rico not provided under this Agreement".

United, a party to the Air Express Agreement, has used the name "Air Express" in connection with its own service, a service very different from the service provided under the Air Express Agreement. This will create confusion among the shipping public and erode the good will of REA by proposing a competitive service under the same name and attempting to pass it off as the service provided under the Agreement. The United tariff therefore constitutes an unfair method of competition within the meaning of Section 411 of the Act.

WHEREFORE, the Board should suspend and investigate Official Air Express Tariff No. AE-2, and order United

Air Lines, Inc. to adhere to the Air Express arrangement pending investigation.

Respectively submitted,

Arthur M. Wisehart
219 East 42nd Street
New York, New York 10017

Of Counsel:

Bert W. Rein
Kirkland, Ellis & Rowe
1776 K Street, N.W.
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the above complaint to be served by first class mail upon Airline Tariff Publishers, Inc., 1709 New York Avenue, Washington, D.C. 20006 and United Air Lines, Inc., P. O. Box 66100, Chicago, Illinois 60606.

July 12, 1974

Peter G. Wolfe

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT
OFFICIAL AIR EXPRESS TARIFF No. 1

19th Revised Page 5
Cancels
18th Revised Page 5

INDEX OF POINTS

For the Alphabetical Index of Points, see Section 2, Pages 24 to 44-B, inclusive.

EXPLANATION OF ABBREVIATIONS

Abbreviation	Explanation	Abbreviation	Explanation
AA	American Airlines, Inc.	Nfld.	Newfoundland
AC	Air Canada	N.H.	New Hampshire
AF	Compagnie Nationale Air France	N.J.	New Jersey
AFB	Air Force Base	N.Mex.	New Mexico
AL	Allegheny Airlines, Inc.	No(s).	Number(s)
Ala.	Alabama	N.S.	Nova Scotia
Alta.	Alberta	NSA	National Security Agency
Ariz.	Arizona	X	X
Ark.	Arkansas		
AS	Alaska Airlines, Inc.	NY	New York Airways, Inc.
A.T.B.	Air Transport Board	N.Y.	New York
Aug.	August	Oct.	October
B.C.	British Columbia	OH	San Francisco & Oakland Helicopter Airlines, Inc.
BN	Braniff Airways, Incorporated	Okla.	Oklahoma
C.A.B.	Civil Aeronautics Board	Ont.	Ontario
Calif.	California	Ore.	Oregon
Co.	Company or County	OZ	Ozark Air Lines, Inc.
CO	Continental Air Lines, Inc.	Pa.	Pennsylvania
C.O.D.	Collect On Delivery	PA	Pan American World Airways, Inc.
Colo.	Colorado	P.E.I.	Prince Edward Island
Concl.	Concluded	PI	Piedmont Aviation, Inc.
Conn.	Connecticut	PV	Eastern Provincial Airways, (1963), Limited
Cont.	Continued	PX	Aspen Airways, Inc.
C.T.C.(A)	Canadian Transport Commission (Air Transport Committee)	Que.	Quebec
D.C.	District of Columbia	RD	Airlift International, Inc.
Del.	Delaware	REA	REA Express, Inc.
EA	Eastern Air Lines, Inc.	R.I.	Rhode Island
etc.	And So Forth	RW	Air West (Hughes Air Corp. d/b/a/ Air West)
FL	Frontier Airlines, Inc.	Sask.	Saskatchewan
Fla.	Florida	SB	Seaboard World Airlines, Inc.
FT	The Flying Tiger Line Inc.	S.C.	South Carolina
Ga.	Georgia	S.Dak.	South Dakota
Ia.	Iowa	Sept.	September
Ida.	Idaho	S.O.	Season Office
Ill.	Illinois	Sta.	Station
Inc.	Incorporated	Tenn.	Tennessee
Incl.	Inclusive	Tex.	Texas
Ind.	Indiana	TT	Texas International Airlines, Inc.
Jct.	Junction	TW	Trans World Airlines, Inc.
Kans.	Kansas	UA	United Air Lines, Inc.
Ky.	Kentucky	U.S.	United States
La.	Louisiana	Va.	Virginia
Lb(s).	Pound(s)	V.A.	Veterans Administration
Man.	Manitoba	viz.	Namely
Mass.	Massachusetts	Vt.	Vermont
Md.	Maryland	WA	Western Air Lines, Inc.
Me.	Maine	Wash.	Washington
Mich.	Michigan	Wis.	Wisconsin
Minn.	Minnesota	W.Va.	West Virginia
Missi.	Mississippi	Wyo.	Wyoming
Mo.	Missouri		
Mont.	Montana		
NA	National Airlines, Inc.		
NASA	National Aeronautics & Space Administration		
N.B.	New Brunswick		
N.C.	North Carolina		
N.Dak.	North Dakota		
Nebr.	Nebraska		
Nev.	Nevada		

EXPLANATION OF REFERENCE MARKS

- ↑ - Denotes Increase.
- ↓ - Denotes Reduction.
- ● - Denotes No Change.
- ▲ - Denotes Change which results in neither increase nor reduction.
- ■ - Denotes Addition.
- X - Denotes Cancelled.
- $ - U.S. Dollars and also Canadian Dollars where Specifically Identified (See Rule No. 4).
- ø - Denotes points which do not receive pick-up and/or delivery service.
- c/o - In care of.

For explanation of abbreviations and reference marks, see above.

POSTING DATE: JUNE 12, 1974 (See Note 1 below)	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: JULY 31, 1974

(Printed in U.S.A.) NOTE 1:- In accordance with Section 302.505 of this Chapter (C.A.B. Procedural Regulations) any complaints as to this tariff must be filed within 12 days after this date.

CORRECTION NO. 2196

208

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	19th Revised Page 6 Cancels 18th Revised Page 6

RULES AND REGULATIONS

RULE NO. 1 - DEFINITIONS

As used herein, unless the context indicates otherwise:-

(A) "Advance Arrangements" as used herein means shipper must contact the carrier prior to the tender of shipment.

(B) 1. "Air Express Service" (sometimes hereinafter referred to as "Air Express") is express transportation of property and services performed in connection therewith, as described in Rules Nos. 8, 13, 15, 16, 18 and 21 to 25, inclusive.

2. Air mail, passengers and their baggage will be given priority over air express. The priority to be accorded air express with respect to other traffic will be determined by the carrier.

(C) "Airline" means any participant in this Tariff other than the Express Company.

(D) "Carrier" includes the Express Company and each Airline.

(E) "Express Company" or "Company" means REA Express, Inc.

(F) "Property" as used herein means the same as "goods".

(G) "Shipment" as used herein means one consignment of one or more packages and/or pieces from one shipper at a single point of origin to one consignee at a single destination, receipted for as one lot on one Air Express Receipt.

RULE NO. 2 - APPLICATION OF TARIFF

This tariff contains door-to-door general and specific commodity rates, rules, regulations and charges for Air Express service except as otherwise shown herein.

RULE NO. 3 - SCOPE OF SERVICE

(A) Each Airline and the Express Company will accept air express shipments for transportation subject to and in accordance with rules and regulations set forth herein and in governing tariffs.

(B) Carrier undertakes to transport each air express shipment expeditiously from Consignor's door TO Consignee's door (See Rule No. 15), consistent with carrier's capacity to carry and the availability of space and suitable equipment. Express shipments hereunder will be accepted at consignor's door and transported to airport at point of origin, and will be delivered from airport at destination to consignee's door by Express Company at all points in the U.S. and at points in Canada served by AA, AF, AL, EA, X, RW, UA, WA and at Montreal, Que., Vancouver, B.C., Victoria, B.C., Winnipeg, Man., served by AC and by AC and Eastern Provincial Airways, (1963) Limited, at all points in Canada. Carrier also, will accept shipment at origin airport and deliver shipment at destination airport upon request of consignor or consignee. Transportation from airport to airport will be by Airline or Airlines to and from points served by each under its certificate or foreign Air permit or license.

(C) Rate Scale numbers published in Section 4 will NOT apply between two points within the same terminal area, including points within the same air rate zone.

RULE NO. 4 - PAYMENT OF CHARGES

(A) Between points in the United States, rates and charges published in this tariff are stated in United States Currency and are payable in the lawful currency of the United States.

(B) INTENTIONALLY LEFT BLANK.

(C) Between a point in the United States and a point in Canada, rates and charges published in this tariff are stated in United States Currency, except that such rates and charges are also stated in Canadian Currency where specifically identified and by application of the Currency Conversion table in Section 14 to rates and charges published in United States Currency in Sections 7 and 11 of this tariff.

(1) When the shipment originates or terminates in the United States and when rates and charges applicable thereto are paid in the United States they are payable in the lawful currency of the United States.

(2) When the shipment originates or terminates in Canada and when rates and charges applicable thereto are paid in Canada they are payable in the lawful currency of Canada.

(Rule No. 4 concluded on next page)

Departure from the terms of Section 221.51 of its Economic Regulations authorized by the Civil Aeronautics Board C.A.B. No. 2671 (Rule No. 4(C) only).

Departure from the terms of Section 8.7 of Part II of Rule 1/52 is authorized in connection with Rule No. 4(C) above, by Special Permission of the Air Transport Board No. 5362, dated August 17, 1962.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

POSTING DATE: JUNE 12, 1974 (See Note 1 below)	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: JULY 31, 1974

(Printed in U.S.A.)

NOTE 1:- In accordance with Section 302.505 of this Chapter (C.A.B. Procedural Regulations) any complaints as to this tariff must be filed within 12 days after this date.

CORRECTION NO. 2197

208

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	5th Revised Page 6-B Cancels 3rd Revised Page 6-B (The 4th Revised Page 6-B was rejected by C.A.B.)

RULES AND REGULATIONS

RULE NO. 4.5 — GUARANTEED SAME DAY SERVICE - (Concluded)

(C) Requests for this service must be made prior to the time the shipment is accepted and the Air Express Receipt must include the statement ("Guaranteed Same Day Service Requested").

(D) "Guaranteed Same Day Service" will be provided only between the following airport cities:-

CITY	Pick-up will be Provided up to (See Note 1)	CITY	Pick-up will be Provided up to (See Note 1)
Atlanta, Ga.....	2:00 P.M.	Miami, Fla....	2:00 P.M.
Boston, Mass....	2:00 P.M.	New York, N.Y.	2:00 P.M.
Chicago, Ill....	2:00 P.M.	St. Louis, Mo.	2:00 P.M.
Dallas, Tex.....	2:00 P.M.	San Francisco, Calif.	7:30 A.M. (See Note 2)
Detroit, Mich...	2:00 P.M.	Washington, D.C.	2:00 P.M.
Kansas City, Mo.	2:00 P.M.		
Los Angeles, Calif....	7:30 A.M. (See Note 2)		

NOTE 1:- The hours listed above next to each city, indicate local times.

NOTE 2:- On shipments BETWEEN Los Angeles, Calif. AND San Francisco, Calif. pick-up will be provided up to 2:00 P.M.

(E) "Guaranteed Same Day Service" will only be provided on prepaid shipments.

(F) Charges listed below, will be assessed in addition to all other applicable charges for the shipment between the points named in Paragraph (D) above:-

(1) A charge of $10.00 per shipment will be assessed when special pick-up service is performed;

(2) A charge of $8.00 per shipment will be assessed when special delivery service is performed;

(3) A charge of $5.00 per shipment will be assessed for special handling of shipments tendered to carrier at origin airport, on which shipper requests "Guaranteed Same Day Service".

(G) The Carrier will refund to the shipper the charges specified in this Rule when the carrier does not render "Guaranteed Same Day Service"

RULE NO. 5 - DISPOSITION OF FRACTIONS

(A) In computing charges, fractions of less than one-half cent will be dropped, and fractions of one-half cent or more will be considered as one cent.

(B) In computing weight, fractions of less than one pound will be considered as one pound.

(C) In computing cubic measurement, fractions of less than one inch in length, width or height, will be considered as one inch.

RULE NO. 6 - DETERMINATION OF WEIGHT FOR ASSESSMENT OF CHARGES

(A) Transportation charges will be assessed on the actual weight, or the cubic dimensional weight of a shipment, whichever is the greater.

(B) Cubic dimensional weight will be computed on the basis of one pound for each 250 cubic inches or fraction thereof (see table in (E) on following page).

(Rule No. 6 Concluded on next page)

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	5th Revised Page 6-A Cancels 3rd Revised Page 6-A (The 4th Revised Page 6-A was rejected by C.A.B.)

RULES AND REGULATIONS

RULE NO. 4 - PAYMENT OF CHARGES - Concluded.

(D) All charges are payable in cash at the time of acceptance by the carrier on prepaid shipments, or at the time of delivery on collect shipments.

EXCEPTION

Provided consignors and/or consignees make arrangements in advance with the carrier, credit on transportation charges will be extended subject to the terms, conditions and time limitations outlined in the following paragraphs:

(1) Credit Period Allowed -

(a) The carrier will release possession of property to consignee in advance of the payment by either consignor or consignee of the tariff charges thereon, and will extend credit in the amount of such charges, for a period of seven (7) days excluding Saturdays, Sundays and legal Holidays.

(b) The credit period shall run from the first twelve (12) O'clock Midnight following presentation of the bill for transportation charges.

(2) Presentation of Bill for Transportation Charges -

(a) Bills for all transportation charges will cover transactions during a calendar week designated as the billing week, as follows:

(i) Collect shipments delivered.
(ii) Prepaid shipments picked up.

(b) Bills for all transportation charges will be presented to the consignor on prepaid shipments and to the consignee on collect shipments within four (4) working days following the close of the billing week.

(c) When mail service is used, the time of mailing by the carrier shall be deemed to be the time of presentation of the bills.

(d) In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.

(3) Time of Collection when Payment is Mailed -

(a) The mailing by the consignor or consignee of valid checks, drafts or money orders, which are satisfactory to the carrier, in payment of transportation charges within the credit period allowed such consignor or consignee, shall be deemed to be the time of collection of transportation charges.

(b) In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.

RULE NO. 4.5 — GUARANTEED SAME DAY SERVICE

(A) Upon advance request of the shipper, the carrier will provide "Guaranteed Same Day Service" (same day delivery to consignee).

(B) "Guaranteed Same Day Service" shall consist of:-

(1) The pick-up of a shipment prior to the time pick-up service is rendered on a regularly scheduled cartage trip and the special dispatch of a vehicle to provide delivery service. This service will only be provided for those airport cities listed in Paragraph (D) of this Rule;

(2) Forwarding by such scheduled air service that will provide the earliest arrival at destination;

(3) Each shipment moving under "Guaranteed Same Day Service" will be delivered to the airline as soon as received by the Company and must have a label attached thereto which clearly identifies the shipment.

(4) Telephone advice concerning time of delivery of the shipment, will be furnished to shipper.

(Rule No. 4.5 concluded on next page)

C. T. C.(A) No. 1 C. A. B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 7	SECTION 1	9th Revised Page 7 Cancels 8th Revised Page 7 (Portions of 7th Revised Page 7 have been postponed)

RULES AND REGULATIONS

RULE No. 6 — DETERMINATION OF WEIGHT FOR ASSESSMENT OF CHARGES - (Concluded)

(C) Cubic inches will be the product of the height, width and length of the shipment. Where packages or pieces comprising a shipment are of irregular size (other than square or rectangular), cubic inches will be the product of the greatest height, width and length.

(D) The cubic inches of a shipment consisting of more than one piece will be the sum of the cubic inches of the pieces.

(E) CUBIC INCHES AND EQUIVALENT CUBIC DIMENSIONAL WEIGHT IN POUNDS:-

Not Exceeding Cubic Inches	Weight in Pounds	Not Exceeding Cubic Inches	Weight in Pounds	Not Exceeding Cubic Inches	Weight in Pounds	Not Exceeding Cubic Inches	Weight in Pounds	Not Exceeding Cubic Inches	Weight in Pounds
250	1	5250	21	10250	41	15250	61	20250	81
500	2	5500	22	10500	42	15500	62	20500	82
750	3	5750	23	10750	43	15750	63	20750	83
1000	4	6000	24	11000	44	16000	64	21000	84
1250	5	6250	25	11250	45	16250	65	21250	85
1500	6	6500	26	11500	46	16500	66	21500	86
1750	7	6750	27	11750	47	16750	67	21750	87
2000	8	7000	28	12000	48	17000	68	22000	88
2250	9	7250	29	12250	49	17250	69	22250	89
2500	10	7500	30	12500	50	17500	70	22500	90
2750	11	7750	31	12750	51	17750	71	22750	91
3000	12	8000	32	13000	52	18000	72	23000	92
3250	13	8250	33	13250	53	18250	73	23250	93
3500	14	8500	34	13500	54	18500	74	23500	94
3750	15	8750	35	13750	55	18750	75	23750	95
4000	16	9000	36	14000	56	19000	76	24000	96
4250	17	9250	37	14250	57	19250	77	24250	97
4500	18	9500	38	14500	58	19500	78	24500	98
4750	19	9750	39	14750	59	19750	79	24750	99
5000	20	10000	40	15000	60	20000	80	25000	100

RULE No. 7 — APPLICATION OF RATES AND CHARGES

(A) General Commodity Rates and Charges.

General Commodity rates and charges (Air Express Rates and Charges) are published in Sections 5 and 7 and apply on all commodities except those which will not be accepted for transportation under the terms of this tariff or of governing tariffs.

▲(B) Specific Commodity Rates and Charges.

(1) Specific commodity rates and charges (Air Express Rates and Charges) are published in Sections 9 and 10 and apply only to specific commodities named therein.

(2) Specific commodity rates and charges (Air Express Rates and Charges) remove the application of the general commodity rates and charges (Air Express Rates and Charges) on the same quantity of the same article or commodity in the same package or shipping form From and To the same points.

(C) INTENTIONALLY LEFT BLANK

(D) When two or more rates subject to different minimum quantities are provided on the same commodity, in the same shipping form, FROM and TO the same points, the lower of the two charges specified under subdivisions (1) and (2) of this paragraph shall be applied:-

(1) The charge computed on the quantity shipped at the rate applicable to such quantity, or
(2) The charge computed on the next greater quantity, for which a lower rate is provided at the rate applicable to such greater quantity.

RULE No. 8 — DECLARED VALUE OF SHIPMENT

(A) ON SHIPMENTS BETWEEN POINTS IN THE UNITED STATES, AND FROM POINTS IN THE UNITED STATES TO POINTS IN CANADA, except as provided in (C) of this Rule for shipments of cut flowers, the rates and charges in this tariff provide for a declared value of $50.00 for a shipment weighing 100 pounds or less, or 50 cents per pound for a shipment weighing over 100 pounds. When the value declared by the shipper in writing exceeds $50.00 for a shipment of 100 pounds or less, or exceeds 50 cents per pound for a shipment weighing over 100 pounds, an additional transportation charge of 18 cents (U.S. Currency) BETWEEN points in the United States; 19 cents (U.S. Currency) and 20 cents (Canadian Currency) FROM points in the United States TO points in Canada will be assessed for each $100.00 or fraction thereof in excess of the value stated above.

(Rule No. 8 concluded on next page)

For explanation of abbreviations and reference marks used but unexplained herein, see Page 5.

ISSUED: JULY 28, 1972

Issued by: G. T. MIANO, Agent
219 East 42nd Street, New York, N. Y. 10017

EFFECTIVE: SEPTEMBER 1, 1972

(Printed in U.S.A.)

CORRECTION No. 1685

NO CHANGE ON THIS PAGE

C. T. C.(A) No. 1 C. A. B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	9th Revised Page 8 Cancels 8th Revised Page 8 (Portions of 7th Revised Page 8 have been postponed)

RULES AND REGULATIONS

RULE No. 8 — DECLARED VALUE OF SHIPMENT - (Concluded)

(B) ON SHIPMENTS FROM POINTS IN CANADA TO POINTS IN THE UNITED STATES except as provided in (D) below for shipments of cut flowers, the rates and charges in this tariff provide for a declared value of $50.00 per shipment. When the value declared by the shipper in writing exceeds $50.00, an additional transportation charge of 19 cents (U.S. Currency) and 20 cents (Canadian Currency) will be assessed for each $100.00 or fraction thereof.

(C) ON SHIPMENTS OF CUT FLOWERS BETWEEN POINTS IN THE UNITED STATES and FROM POINTS IN THE UNITED STATES TO POINTS IN CANADA, the rates and charges in this tariff provide for a declared value of $10.00 for a shipment weighing 100 pounds or less, or 10 cents per pound for a shipment weighing over 100 pounds. When the value declared by the shipper in writing exceeds $10.00 for a shipment of 100 pounds or less, or exceeds 10 cents per pound for a shipment weighing over 100 pounds, an additional transportation charge of $2.00 (U.S. Currency) and $2.06 (Canadian Currency) will be assessed for each $100.00 or fraction thereof, in excess of the value stated above.

(D) ON SHIPMENTS OF CUT FLOWERS FROM POINTS IN CANADA TO POINTS IN THE UNITED STATES, the rates and charges in this tariff provide for a declared value of $10.00 per shipment. When the value declared by the shipper in writing exceeds $10.00, an additional transportation charge of $2.00 (U.S. Currency) and $2.06 (Canadian Currency) will be assessed for each $100.00 or fraction thereof.

(E) The weight used to determine the declared value of a shipment shall be the same as that which is used to determine the transportation charge for such shipment.

RULE No. 9 — INTENTIONALLY LEFT BLANK

RULE No. 10— ACCEPTANCE OF LIVE ANIMAL OR BIRD SHIPMENTS

Shipments of live Animals or Birds will only be accepted subject to the following conditions:-

(A) All laws, ordinances and other governmental rules and regulations governing the transportation of animals and birds must be complied with by the shipper and consignee.

(B) Except as otherwise provided in this tariff, all charges MUST BE EITHER:-
(a) Prepaid by shipper, or
(b) Guaranteed in writing by shipper.

(C) NON-DELIVERY OR SHIPMENTS REFUSED BY CONSIGNEE:-
If the carrier, through no fault of its own, is unable to make delivery of a shipment or if consignee refuses to accept a shipment, the following steps will be taken:-

(a) The destination office will contact shipper by a collect telephone call, requesting instructions for immediate disposition of the shipment.
(b) When shipper does not provide immediate forwarding instructions as requested under subparagraph (a), the shipment will be returned to shipper provided with food and water. On return to shipper, the shipper must pay all applicable charges in connection with the shipment. The carrier will not be liable for any losses sustained by shipper, if such losses are due to any act of negligence on the part of either shipper or consignee.

(D) Specifications governing the marking and packing of shipments, as published in Rule No. 19 of this tariff must be complied with.

(E) Sufficient food and water must be furnished by shipper in order to sustain live animals or birds from point of origin to point of destination. If shipper desires carrier to feed or water animals or birds after arrival at destination, the kennel, crate or cage must have rust proof receptacles permanently fastened inside for this purpose. The shipper shall provide instructions for feeding and watering at destination, on both the Air Express Receipt and on the kennel, crate or cage.

(F) Shipments of live animals and birds are subject to advance arrangements. (See Rule No. 1 (A) of this tariff).

RULE No. 11 — TRANSIT TIME

(A) Any Air Express shipment or commodity will be subject to refusal, delay or embargo by carrier, if such shipment or commodity cannot be transported with reasonable dispatch by reason of any governmental rules, regulations, or orders, or because of unavailability of suitable equipment or space or for other conditions beyond the control of the carrier.

(B) Carrier will endeavor to perform transportation without delay, but carrier assumes no obligation to commence or complete transportation within a certain time or according to any specific schedule. No agent or other employee of carrier has authority to make any agreement as to time of delivery.

(C) INTENTIONALLY LEFT BLANK.

RULE No. 12 — ACCEPTANCE OF SHIPMENTS

(A) Shipments Acceptable

Except as otherwise provided in this or in other applicable tariffs, all property is acceptable for transportation only when the rules and regulations of the tariffs and all laws, ordinances, and other governmental rules and regulations govering the transportation thereof have been complied with by the shipper, consignee or owner.

(Rule No. 12 concluded on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED:	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N. Y. 10017	EFFECTIVE:
JULY 28, 1972		SEPTEMBER 1, 1972

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	8th Revised Page 9 Cancels 7th Revised Page 9

RULES AND REGULATIONS

RULE NO. 12 - ACCEPTANCE OF SHIPMENTS - (Concluded)

(B) Shipments Subject to Advance Arrangements (See Rule No. 1(A))

The following will be acceptable for carriage only upon advance arrangements:

(1) Shipments liable to impregnate or otherwise damage equipment or other shipments.

(2) Shipments requiring Security Signature Service (see Rule No. 24) or Armed Guard-Protective Security Service (see Rule No. 25).

(3) Shipments requiring special attention, protection or care enroute.

(4) INTENTIONALLY LEFT BLANK

(5) Shipments of human remains.

(6) Shipments with pieces:

(i) in excess of 200 lbs.
(ii) in excess of 20 x 24 x 44 inches.
(iii) with combined length and girth in excess of 132 inches.
(iv) with floor bearing weights in excess of 100 pounds per square foot.

(C) Shipments Not Acceptable

The following shipments will not be accepted:

(1) Shipments for which the carrier is required to obtain a Federal, State or local license for their transportation when the carrier has elected not to comply with such license requirements.

(2) Shipments requiring special devices for safe handling unless such special devices are provided and operated by and at the risk of the shipper or consignee.

(3) Money, jewelry, negotiable paper, liquids, fragile or perishable articles, Precious Metals, and Precious Stones enclosed in shipments of personal effects.

(4) Fragile articles liable to damage by shock.

(5) Shipments which would be likely to cause injury or offense to crew or passengers, damage to other shipments, or whose carriage is prohibited by law.

(6) Shipments consigned to an individual or firm at one point and marked in care of an individual or firm at another point.

(7) Shipments consigned "To Order" or "To Notify" a bank or any person.

(8) Shipments prohibited by Official Air Transport Restricted Articles Tariff No. 6-D, C.T.C.(A) No. 37, C.A.B. No. 82, revisions and subsequent issues thereof, Airline Tariff Publishers, Inc., Agent.

RULE NO. 13 - ADVANCEMENT OF CHARGES

(A) Upon request, the carrier will advance charges for prior transportation performed by a transportation agency, at no additional charge, provided the transportation agency tenders to the carrier a manifest in duplicate listing the following information:

1. Air Express Receipt Number for each shipment;
2. The name of the shipper and consignee and the individual weight of each shipment; and
3. The name and address of the transportation agency performing such prior transportation (see Exception).

EXCEPTION - If the transportation agency fails to:

(1) tender the aforementioned manifest, the carrier will make out such manifest subject to a charge of $1.00 (U.S. Currency), &$1.01 (Canadian Currency) for each shipment tendered; and

(2) List all the required information on the manifest, the carrier will complete such manifest subject to a charge of $1.00 (U.S. Currency), &$1.01 (Canadian Currency), for each shipment on which it is necessary to complete such information.

(B) INTENTIONALLY LEFT BLANK

(Rule No. 13 concluded on next page)

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	8th Revised Page 10 Cancels 7th Revised Page 10

RULES AND REGULATIONS

RULE NO. 13 - ADVANCEMENT OF CHARGES - (Concluded)

(C) Charges which are advanced under the terms of this rule must be shown in the "Advance Column" on the Air Express Receipt and must show the name of the transportation agency to whom such charges were advanced.

(D) No charges will be advanced on any shipment requiring prepayment under Rule No. 14.

RULE NO. 14 - CHARGES PREPAID OR COLLECT

(A) Except as provided in paragraph (B) and (C) below, shipments will be accepted either with charges to be prepaid by the shipper, or to be collected from the consignee.

S (B) On shipments originating at Cordova, Kotzebue, Nome, Unalakleet, Yakutat, Alaska, charges MUST BE COLLECTED at destination air express office. On shipments destined to Cordova, Kotzebue, Nome, Unalakleet, Yakutat, Alaska, charges MUST BE PREPAID at origin air express office.

(C) The following shipments must be prepaid:

(1) Shipments of human remains.

(2) Shipments addressed to government agencies, unless shipped by government agents presenting proper credentials or unless shipped on government bills of lading.

(3) Shipments not equal in commercial value to the charges thereon.

(4) Shipments consigned to or forwarded by persons restrained of their liberty in prisons, penitentiaries, mental institutions or other institutions of detention.

(5) CANADIAN MILITARY AND NAVAL FORCES - Personal Packages for officers or men belonging to the regular air force, army or militia, when to be delivered in the field or in camps; for officers, sailors or marines on sea duty; and for cadets at military and naval academies.

(6) Shipments of used household effects.

(7) Shipments addressed to consignees temporarily at a transient address.

(8) Shipments of personal effects consisting of wearing apparel, cosmetics, toilet articles and articles worn by an individual, used, not for resale.

(9) Shipments of currency or coin from points in Canada consigned to Federal Reserve Banks in the United States.

(10) INTENTIONALLY LEFT BLANK

(11) Shipments to be delivered to Customs or to transportation terminals.

RULE NO. 15 - PICK-UP AND DELIVERY SERVICE

(A) Pick-up and delivery service will be provided at all points listed in Section 2 except as otherwise provided therein.

(B) At buildings where carrier's employees are not permitted access to floors above the first or ground floor, the carrier will pick-up shipments only when tendered at such floor, and shipments delivered to the person whose duty it is to receive property for occupants of such buildings shall constitute delivery to the consignee.

(C) No allowance shall be made for any services performed by either shipper or consignee.

(D) When vehicle driver is requested by shipper to wait to pick-up a shipment, a charge of $3.50 will be made for each 15 minutes (or fraction thereof) of waiting time, in excess of the first 15 minutes.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: FEBRUARY 7, 1974	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: MARCH 15, 1974 (Except as Noted)

(Printed in U.S.A.)

S — EFFECTIVE February 14, 1974. Issued on one (1) day's notice under Special Tariff Permission No. 33223 of the Civil Aeronautics Board.

CORRECTION NO. 2132

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	8th Revised Page 17 Cancels 6th and 7th Revised Page 17

RULES AND REGULATIONS

RULE NO. 21 - NOTICE AND DISPOSITION OF UNDELIVERED SHIPMENTS

(A) Applicable only on shipments BETWEEN Points in the UNITED STATES:

(1) When delivery of a shipment is tendered at consignee's address and is not accepted, notice thereof will be promptly sent or given to consignee and shipper.

(2) If the consignee is unknown at the address marked on the shipment or has left that address, notice of non-delivery will be promptly sent to the consignee at that address, and also to the shipper. Notice will not be mailed to consignee unless the local street address or Post Office Box number of consignee is shown on the shipment.

(3) If the consignee's address is beyond the carrier's delivery limits, notice of arrival will be promptly sent or given to consignee. If shipment is refused or cannot be delivered, shipper will be notified thereof.

▲(4) (a) The notice to consignee required in preceding paragraphs of this Rule will be in writing, or in such other form as agreed to between the carrier and the shipper.

(b) Notices to the shipper will be in writing.

(c) All written notices will be sent to the appropriate address marked on the shipment.

▲(5) Refused or unclaimed shipments will be returned to shipper at his request and in accordance with his direction, upon payment of all charges on the shipment, including storage charges and charges for such return transportation.

(6) When perishable property, or property which by its very nature requires expeditious handling, is accepted for shipment, and delay at point of origin thereafter develops or is reasonably anticipated, carrier, upon receipt of such knowledge, shall promptly attempt to notify shipper thereof, requesting instructions. If, after reasonable attempt on the part of carrier, in such cases to give such notice, no further instructions are received, carrier will reroute the shipment by other means of transportation, or to dispose of it, in accordance with the provisions of paragraph (7) of this Rule.

(7) When a shipment containing perishable articles is delayed in the possession of the carrier, or is unclaimed, refused, or threatened with deterioration, the carrier shall have the right immediately to take such steps as it sees fit for the protection of carrier and other parties in interest including collect communications for instructions, or sale or other disposition of such perishable articles without instructions.

■(B) STORAGE (at points in the United States only):

(1) Shipments will be held by the carrier without charge for two (2) calendar days (excluding Saturdays, Sundays and legal holidays) after consignee has been notified of arrival of the shipment, computed from the first 7:00 A.M. after such notice is sent or given.

(2) After the expiration of such free time, the carrier will continue to hold such shipments for the shipper and consignee, subject to a charge of $1.00 (U.S.Currency), $1.03 (Canadian Currency) per day, minimum charge $2.00 (U.S.Currency), $2.06 (Canadian Currency) per shipment, or if such continued holding is not practicable, carrier will place the shipment in a public warehouse, at the expense of the shipper and consignee.

▲(C) Applicable only on shipments BETWEEN Points in the UNITED STATES on the one hand AND Points in CANADA on the other hand:

(1) If a shipment, whether "In Bond" or not, is not delivered by reason of the consignee's refusal to accept it or by reason of the consignee's address being unknown, carrier will immediately send written notice thereof to the shipper by government mail giving full information as to the reasons for non-delivery.

(2) If for any other reason a shipment remains undelivered, a similar notice must be sent to shipper when shipment is placed "Unclaimed" by Customs, but such notice shall be sent in any event within forty-five (45) days from date of forwarding. If notice to shipper has not been replied to within thirty (30) days, all charges on the shipment will be assessed against the shipper. Shipment shall not be returned (whether C.O.D. or otherwise) until reply has been received authorizing its return.

(3) If carrier at forwarding point has not received notice in accordance with the foregoing within ninety (90) days of date of forwarding, it will be assumed delivery has been made and carrier will release the guarantee or refund the deposit.

■(D) STORAGE (at points in Canada only):

(1) Shipments held more than 72 hours in carrier's warehouse pending Canadian Customs release, will be subject to storage charges at the rate of 25 cents (U.S.Currency), 26 cents (Canadian Currency) per day for each 100 pounds, minimum charge $1.00 (U.S.Currency) $1.03 (Canadian Currency) per shipment. Any fractional part of 100 pounds will be treated as 100 pounds. Chargeable weight of the shipment will be used for computing storage charges.

(2) In computing both free and storage time, Saturdays, Sundays and legal holidays (National, Provincial or Municipal) will be excluded. When a legal holiday falls on a Saturday or Sunday, the following Monday will be excluded. In computing time, any fractional part of 24 hours will be computed as one day.

RULE NO. 22 - CERTIFICATE OF DELIVERY

Upon request of shipper, carrier will obtain and forward to shipper, by mail, at a charge of e$1.00 (U.S. Currency), ♦$1.03 (Canadian Currency):

(1) a shipper prepared postcard, completed by consignee.

(2) a copy of shipment delivery record.

RULE NO. 23 - SHIPMENTS HELD IN CARRIER'S WAREHOUSE IN SAN JUAN, PUERTO RICO

Shipments held more than forty eight (48) hours, in carrier's warehouse in San Juan, Puerto Rico, pending Puerto Rican Tax Bureau assessment, will be subject to a charge of $2.00 ■(U.S.Currency) per shipment.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: December 14, 1970	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: December 16, 1970

(Printed in U.S.A.)

Issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board. (Application No. 10). Issued upon not less than one (1) day's notice under Special Permission No. 10585, dated December 10, 1970 of the Canadian Transport Commission (Air Transport Committee).

CORRECTION NO. 1514

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	8th Revised Page 18 Cancels 5th and 7th Revised Page 18 (The 6th Revised Page 18 was rejected by C.A.B. and C.T.C.)

RULES AND REGULATIONS

RULE NO. 24 - ▲SECURITY SIGNATURE SERVICE

▲(A) The carrier will provide "Security Signature Service" as follows:

■(1) On any shipment when requested by the shipper or consignee, provided the Air Express Receipt tendered with the shipment contains the notation "SECURITY SIGNATURE SERVICE REQUESTED", and

■(2) On all shipments containing any article or commodity as named in paragraph (C) of this rule.

▲(B) "Security Signature Service" as used in this Rule shall mean that each employee or agent of the carrier shall execute a signed receipt upon accepting custody of the shipment and shall obtain a signed receipt upon relinquishing custody of such shipment to another employee or agent, except that no receipt will be secured from the flight crew or attendants of carrier's aircraft on which shipments are being transported.

■(C) Any shipment containing any of the following articles or commodities on which the declared value of the shipment is:

(1) Less than $5,000.00(U.S.Currency), $5,150.00 (Canadian Currency) determined under Rule No.8 of this tariff,

or

(2) $5,000.00 (U.S.Currency), $5,150.00 (Canadian Currency) or more and provided that the declared value per pound determined under Rule No.8 of this tariff is less than $50.00 (U.S.Currency), $51.50 (Canadian Currency) per pound,

will only be accepted for transportation when the carrier provides Security Signature Service under provisions and charges in paragraphs (A) and (D) of this Rule:

Bullion or Precious Metals	Gold Bullion, Coined, Uncoined, Cyanides, Dust or Sulphides	Pearls
Currency		Platinum
Dore Bullion	Jewelry	Silver Bullion, Coined, Uncoined, Concentrates, Cyanides, Precipitates or Sulphides
Firearms, all types	Money	
Furs	Narcotics and Narcotic Drugs	Watches
Gems, Cut or Uncut		

♦(D) A charge of $5.00 (U.S.Currency), $5.15 (Canadian Currency) per shipment will be assessed for Security Signature Service, in addition to all other applicable charges.

RULE NO. 25 - ▲ARMED GUARD-PROTECTIVE SECURITY SERVICE

▲(A) The Carrier will provide "Armed Guard-Protective Security Service" as follows:

■(1) On any shipment when requested in writing by either the shipper or consignee, provided such request is made prior to tender of the shipment and the Air Express Receipt tendered with the shipment and each piece therein contain the notation "ARMED GUARD-PROTECTIVE SECURITY SERVICE REQUESTED", and

■(2) On all shipments containing any article or commodity as named in paragraphs (E) and (F) of this rule.

▲(B) "ARMED GUARD-PROTECTIVE SECURITY SERVICE", as referred to herein, means that shipments will be carried under person-to-person signature by armed employees of the Express Company, regularly assigned to protecting traffic requiring person-to-person signature, from time of receipt at origin to delivery at destination, except while shipment is aboard the airplane. Shipments will be loaded by airline employees, under observation of the Express Company's armed guard, in the baggage or cargo compartment of the airplane which is not accessible to any person aboard during the period the airplane is in flight.

(C) In addition to the service described in (B) above, a special armed guard will be assigned to keep shipments under continuous observation during the course of movement as follows:

(1) From time shipment is accepted from shipper at point of origin until loaded into airplane and the airplane has departed from the ramp.

▲(2) During the course of transfer between airplanes at transfer points, armed guard will be maintained until connecting flight has departed from the ramp.

▲(3) If shipment is carried on an airplane scheduled to make stops at intermediate points short of final destination, armed guard will be maintained during the entire time the airplane is on the ground during such stops.

(4) From time of unloading at destination until delivery to consignee.

♦(D) CHARGES

A charge of $30.00 (U.S. Currency), $30.90 (Canadian Currency) per shipment will be assessed for the performance of Armed Guard-Protective Security Service, in addition to all other applicable charges.

(Rule No. 25 concluded on next page)

For provisions of Rule No. 25(D) in effect prior to the effective date hereof, see 5th Revised Page 19.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: December 14, 1970	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: December 16, 1970

(Printed in U.S.A.) Issued on one (1) day's notice under Special Tariff Permission of the Civil Aeronautics Board. (Application No.10). Issued upon not less than one (1) day's notice under Special Permission No.10585, dated December 10, 1970 of the Canadian Transport Commission (Air Transport Committee).

CORRECTION NO. 1515

NO CHANGE ON THIS PAGE. C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	3rd Revised Page 11 (Issued in lieu of 2nd Revised Page 11 Rejected by C.A.B. and C.T.C.(A)) Cancels 1st Revised Page 11

RULES AND REGULATIONS

RULE No. 16 - C.O.D. (COLLECT ON DELIVERY) SHIPMENTS

(A) Shipments may be forwarded C.O.D. (Collect On Delivery) subject to the following requirements and existing Customs Regulations:

(1) The letters "C.O.D.", the amount to be collected, and the name and address of the shipper and the consignee shall be legibly marked on each package.

(2) The amount to be collected in addition to the transportation or other service charges and the amount of such charges shall be entered on the Express Receipt in spaces provided for that purpose.

(3) The amount of a C.O.D. will be accepted as the value of the shipment and charges assessed accordingly, unless a higher or lower value is declared by the shipper, inserted in the receipt and legibly marked on package by the shipper.

(4) The amount of the transportation or other service charges and the amount to be collected in addition thereto shall both be collected when delivery is made. Credit will not be extended on C.O.D. shipments. The amount of the C.O.D. will be remitted to the shipper, or other person designated by the shipper as payee, within ten (10) days after delivery of C.O.D. shipment to consignee.

(5) C.O.D. shipments will be forwarded to another destination on order of the consignee only after the amount of the charges and the amount to be collected in addition thereto have been deposited with the carrier at the new destination.

THE FOLLOWING SUB-PARAGRAPHS NUMBERS 6 to 10, INCLUSIVE, DO NOT APPLY ON SHIPMENTS ORIGINATING AT OR FORWARDED TO OFFICES IN CANADA.

C.O.D. SHIPMENTS BETWEEN THE UNITED STATES AND CANADA WITH PRIVILEGE OF EXAMINATION MUST NOT BE ACCEPTED.

(6) Examination, trial, or one partial delivery of C.O.D. shipments will be permitted only when instructions to that effect are written or printed both on the package and on the bill or invoice which accompanies the shipment or upon written authority from the shipper endorsed by the carrier at point of origin.

(7) Shipments of diamonds, or other precious stones, set or unset, will not be accepted with privilege of examination when the value declared by shipper exceeds $50.00.

(8) Shipments will be accepted for delivery on approval, or for selection and partial delivery, provided only one collection is involved and includes charges on the entire shipment. The unaccepted balance of a shipment will be accepted for return to shipper subject to applicable charges.

(9) Examination or trial shall be on the premises of the carrier, or in the presence of an employe of the carrier, unless the instructions accompanying the shipment specifically provide otherwise, in which case examination or trial shall be limited to a period not exceeding six days. Shipments will be delivered into the sole custody of a consignee for examination or trial only upon payment of the amount of the charges and the amount to be collected in addition thereto. The amount collected will be remitted or the goods returned to shipper, immediately after the expiration of the examination or trial period, unless the shipper by special instructions directs that the shipment be held for a period of not exceeding 30 days from date of original delivery to consignee.

Exception:- This provision is not applicable to shipments of Live Creatures.

Exception:- The period for examination or trial of machinery, parts thereof, or devices of any description, which must be set up, connected with other machinery or with a power source, and brought into adjustment in actual operation, may be extended to a period not exceeding fifteen days if the instructions accompanying the shipment specifically so provide.

(Rule No. 16 continued on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: JUNE 5, 1974	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N. Y. 10017	EFFECTIVE: JULY 15, 1974

(Printed in U.S.A.) CORRECTION No. 2184

NO CHANGE ON THIS PAGE.

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	3rd Revised Page 12 Cancels 2nd Revised Page 12

RULES AND REGULATIONS

RULE No. 16 - C.O.D. (COLLECT ON DELIVERY) SHIPMENTS - (Continued)

(A) - Continued

(10) INTENTIONALLY LEFT BLANK

(11) The disposition of C.O.D. shipments which are refused by, or for any reason cannot be delivered to the consignees will be subject to the instructions of the shipper legibly marked on the package at time of shipment, or given in writing and endorsed by the carrier's agent at point of origin, provided that all accrued and unpaid charges are guaranteed by shipper and all Customs requirements have been complied with.

(12) Instructions from shippers may not be accepted either at time of shipment or subsequent thereto, which provide that if the consignee refuses the shipment, the C.O.D. is to be released and the goods held subject to shipper's order.

(13) If a C.O.D. shipment moving BETWEEN Points in the UNITED STATES is refused or cannot be delivered either at the original or a later destination within 24 hours after arrival the shipper will be notified immediately, and if the shipment is not disposed of within 30 days (or such longer period as the instructions of the shipper may specify, but not exceeding 90 days), after such notice, it will be returned subject to accumulated charges, including return charges. When two or more C.O.D. shipments are ordered returned by the same shipper, from the same place at the same time, they will be considered one shipment on return, and charges applied accordingly.

(14) C.O.D. shipments of spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, will be accepted for interstate transportation from one State, Territory, or District of the United States to any other State, Territory or District of the United States, or for intrastate transportation between points in any State, Territory, or District of the United States, or between the United States and Canada, unless the acceptance, transportation, or delivery of such liquor is prohibited by law.

(Rule No. 16 continued on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: JUNE 5, 1974	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: JULY 15, 1974

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CORRECTION No. 2185

▲C. T. C.(A) No. 1 C. A. B. No. 1

■G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION I	3rd Revised Page 13 (Issued in lieu of 2nd Revised Page 13 Rejected by C.A.B. and C.T.C.(A)) Cancels 1st Revised Page 13

RULES AND REGULATIONS

RULE NO. 16 - C.O.D. (COLLECT ON DELIVERY) SHIPMENTS - (Continued)

(A) - Concluded.

(15) A C.O.D. shipment will not be accepted or receipted for when marked or accompanied by a C.O.D. brief or envelope showing as the shipper a firm or person different from that stated in the Air Express Receipt, but nothing herein shall prevent acceptance of C.O.D. shipments from any agent, branch, or representative of any business concern with instructions to return the amount of the C.O.D. to the home office, a branch office, or banking depository of such business concern, or the acceptance of C.O.D. shipments from the home office with instructions to return the amount of the C.O.D. to its agent, branch or representative, providing that these instructions are clearly stated in the Air Express Receipt, on the package, and on the C.O.D. brief or envelope.

(16) When a C.O.D. shipment, which is refused or cannot be delivered for other reasons, is sold, and the amount realized does not cover the amount of the charges, plus the amount of the C.O.D., the proceeds of the sale, less all applicable charges except collection and remittance charges will be remitted by Treasurer's Draft or Money Order and the Money Order Fee charged for the service. Charges prescribed in Paragraph (B) below shall not be applied unless the amount realized from the sale is equal to or in excess of the amount of the C.O.D., plus all other applicable charges.

(B) For collecting and remitting the amount of the C.O.D., the following service charges will be assessed:

WHEN THE AMOUNT COLLECTED IS:	Between Points in the United States:	Between Points in the United States And Points in Canada:		WHEN THE AMOUNT COLLECTED IS:	Between Points in the United States:	Between Points in the United States And Points in Canada:	
	Charge for Collecting and Remitting WILL BE				Charge for Collecting and Remitting WILL BE		
	U.S.Currency		Canadian Currency		U.S.Currency		Canadian Currency
Not over $2.50	$ 0.51	$ 0.55	$ 0.59	$250.01 not over $ 300.00	$ 3.12	$ 3.34	$ 3.61
$ 2.51 not over $ 5.00	.58	.62	.67	300.01 " " 350.00	3.51	3.79	4.10
5.01 " " 10.00	.84	.90	.97	350.01 " " 400.00	3.94	4.22	4.56
10.01 " " 25.00	.99	1.06	1.15	400.01 " " 450.00	4.35	4.65	5.03
25.01 " " 50.00	1.17	1.25	1.35	450.01 " " 500.00	4.76	5.09	5.50
50.01 " " 60.00	1.38	1.48	1.60	500.01 " " 550.00	5.16	5.52	5.97
60.01 " " 75.00	1.43	1.53	1.65	550.01 " " 600.00	5.56	5.95	6.43
75.01 " " 100.00	1.50	1.61	1.74	600.01 " " 650.00	5.98	6.40	6.92
100.01 " " 105.00	1.90	2.03	2.19	650.01 " " 700.00	6.38	6.83	7.38
105.01 " " 110.00	1.98	2.12	2.29	700.01 " " 750.00	6.80	7.28	7.87
110.01 " " 120.00	2.04	2.18	2.36	750.01 " " 800.00	7.18	7.68	8.30
120.01 " " 125.00	2.10	2.25	2.43	800.01 " " 850.00	7.60	8.13	8.79
125.01 " " 150.00	2.16	2.31	2.50	850.01 " " 900.00	8.01	8.57	9.27
150.01 " " 160.00	2.31	2.47	2.67	900.01 " " 950.00	8.40	8.99	9.72
160.01 " " 180.00	2.37	2.54	2.75	950.01 " " 1,000.00	8.82	9.44	10.21
180.01 " " 200.00	2.40	2.57	2.78				
200.01 " " 250.00	2.72	2.91	3.15	Over $1,000.00 at the rate of	$ 8.82 per $1,000.00	$ 9.44 per $1,000.00	$ 10.21 per $1,000.00

The collection and remittance charge will be collected from the consignee unless the shipper instructs otherwise. In the latter case, the amount of the charge will be deducted from the remittance.

(Rule No. 16 concluded on next page)

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CORRECTION No. 2186

▲G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	3rd Revised Page 14 (Issued in lieu of 2nd Revised Page 14 Rejected by C.A.B. and C.T.C.(A)) Cancels 1st Revised Page 14

RULES AND REGULATIONS

RULE NO. 16 - C.O.D. (COLLECT ON DELIVERY) SHIPMENTS - (Concluded)

(C) Except as otherwise provided in the following paragraph, remittances on C.O.D. shipments will be made by Treasurer's Draft, Check or Money Order provided for that purpose, payable to the shipper, or to any other person or firm designated by the shipper, as more specifically referred to in Paragraph (A), Sub-paragraph (15) above, will be sent to the payee by mail.

(D) On shipments moving BETWEEN Points in the UNITED STATES when instructions are given by the shipper to accept as payment in whole or in part of a C.O.D. shipment, a signed contract, lease, mortgage, deed, note, check, draft, trade acceptance or redeemed pawn ticket, the charge for securing and returning such paper will be:

(1) When paper as described above alone is returned, at one-half of the charge published in Paragraph (B) of this rule on the face value of the paper, minimum charge $1.93.

(2) When returned in cash, part cash, and part paper, as described above, assess on the cash, charges published in Paragraph (B) of this rule plus one-half the charge in Paragraph (B) of this rule on the face value of the paper but the total charge shall not be less than $1.93.

(3) Such paper or currency, if any, accepted in payment of C.O.D.'s will be enclosed in an envelope and forwarded to payee under protection of an Air Express Receipt marked "MONEY". When charges for collection and remittance are paid by consignee, the return to payee shall be under a prepaid Air Express Receipt marked "MONEY"

(E) On shipments moving BETWEEN Points in CANADA AND THE UNITED STATES, when instructions are given by the shipper to accept as full or part payment of the amount to be collected on a C.O.D. shipment, a signed contract, lease, mortgage, deed, note, check, draft, trade acceptance or redeemed pawn ticket, the charge for securing and returning such paper, together with the amount of any currency collected in part payment, shall be at charges published in Paragraph (B) of this rule, on the aggregate amount of currency collected, plus one-half the amount of such charges on the face value of the contract, lease, mortgage, deed, note, check, draft, trade acceptance or redeemed pawn ticket.

(F) When payment of the C.O.D. either in whole or in part consists of a Contract and Notes for the amount named in the Contract, the express charge will be based on the aggregate face value of the Notes only and not on the face value of both Notes and Contract.

(G) Remittances for money collected in full payment or in part payment of C.O.D.'s must be made by means of Money Order or by Check provided for that purpose, the Money Order or Check to be made payable to the shipper of the original C.O.D. or his representative (the person to whom proceeds are to be returned) and the Money Order or Check must be forwarded by Government Mail addressed to the payee. (See Exception).

Exception: Where currency is collected by the carrier at points in Canada in part payment of C.O.D.'s it will be returned to the shipper in money envelope with other paper.

The amount of the C.O.D. on C.O.D. shipments must be stated in terms of United States money.

When payment is made in Canadian money on C.O.D. shipments delivered in Canada, the amount collected must be sufficient to permit remittances in United States funds by money order or C.O.D. checks in the full amount of the C.O.D.

The service charges will be collected in Canadian funds.

On C.O.D. shipments delivered in the United States, collection of the amount of the C.O.D. will be made in United States money which will be remitted by Treasurer's Draft made payable to shipper.

RULE NO. 17 - ROUTING

(A) All Air Express shipments shall be routed by, or at the direction of, the Express Company. Neither the shipper, consignee, or owner of a shipment shall have the right to designate the airline or airlines over whose route or routes an Air Express shipment shall be transported.

(B) The priority of carriage as between Air Express shipments will be determined by the carrier.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: JUNE 5, 1974	▲Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: JULY 15, 1974

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CORRECTION No. 2187

NO CHANGE ON THIS PAGE.

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	21st Revised Page 15 Cancels 20th Revised Page 15

RULES AND REGULATIONS

RULE NO. 18 - LOST OR DAMAGED SHIPMENTS (Does not apply at points in Canada)

(A) No shipment in an obviously damaged condition will be delivered until consignee has had an opportunity to examine the shipment. If the consignee refuses the shipment, written notice of the condition of the shipment will be mailed to the shipper at the address given on the shipment.

(B) When a shipment is delivered in apparently good condition, the carrier will not assume any responsibility for loss or damage claimed by consignee unless such loss or damage is reported to the carrier at once and in no event later than fifteen (15) days after date of delivery and the carrier is afforded an opportunity to inspect the container and contents in order to verify the loss or damage.

(C) The carrier will immediately acknowledge receipt of a claim made in writing and will, within six (6) months of the date thereof, notify the claimant in writing of the disposition made thereof.

(D) In cases of partial loss or damage, the carrier will assume liability only for the actual value of the property lost or damaged, but not exceeding the total value declared at the time of shipment.

(E) Intentionally left blank.

RULE NO. 19 - PACKING AND MARKING REQUIREMENTS

(A) Each package or piece of property comprising a shipment shall be legibly and durably marked with the name and address of the shipper, and the name and address of the consignee.

(B) All shipments shall be so prepared or packed as to insure safe transportation with ordinary care in handling.

(C) For other packing and marking requirements refer to Official Air Transport Restricted Articles Tariff No. 6-D, C.T.C.(A) No. 37, C.A.B. No. 82 or revisions and subsequent issues thereof, Airline Tariff Publishers, Inc., Agent.

(D) Fish, Live; when fish do not require attention enroute, fish to be placed in water in a clear polyethylene bag having a minimum thickness of 0.003 of an inch, this bag then to be placed in an outer clear polyethylene bag of at least the same thickness. All bags must be free of any defects.
Both bags must be sealed, tied or otherwise secured so as to be leakproof. Bags must be new and stamped with name and location of manufacturer and thickness of bags.
Bags containing fish and water must be packed in an inner and outer container as described below:

(1) Inner Container

Must be a one piece box, die-cut and diagonally scored from the one fibreboard sheet with score lines folding inward to make up into a square package with leakproof corners, top flaps meeting at center of box. Inner liner must have application of wax applied hot with roller. Wax to contain at least 3% polyethylene or equal material and having a melting point of 130 degrees Fahrenheit. Wax to be applied to flat sheet before it is die-cut or scored. This container must be constructed so that it will fit snugly within an outer fibreboard shipping container, as described below:

(2) Outer Container

Must be moisture resistant. Maximum inside dimensions must not exceed fifty united inches. Gross weight of containers and contents must not exceed 35 pounds.

(3) Inner and Outer containers must be of double-faced corrugated or solid fibreboard construction having a Cady or Mullen test of at least 200 pounds and must also bear box makers' regulation certificate. Insulating liners or other insulating materials should be used to protect fish against overheating or freezing.

(4) Sealing

Sealing and closure of fibreboard containers may be accomplished by tape, steel strapping, waterproof adhesive or a combination thereof, so that containers will not open during transportation.

(5) Marking

Outer shipping container must be appropriately marked or labeled "HANDLE WITH CARE", "LIVE FISH", "THIS SIDE UP", "KEEP FROM FREEZING OR OVERHEATING", "DO NOT CHANGE WATER", etc.

OR

(E) Fish and water placed in a clear polyethylene bag having a minimum thickness of 0.004 of an inch, this bag then to be placed in a moisture resistant double-faced corrugated fibreboard box with maximum inside dimensions, not to exceed ninety (90) united inches, box to have a Cady or Mullen test of at least 275 pounds and must also bear box makers' regulation certificate. Bag should be covered with newspapers or other material to protect fish against overheating or freezing and absorb any leakage from the bag.

(1) Sealing

Sealing and closure of fibreboard containers may be accomplished by tape, steel strapping, waterproof adhesive or a combination thereof, so that containers will not open during transportation.

(2) Marking

Outer shipping container must be appropriately marked or labeled "HANDLE WITH CARE", "LIVE FISH", "THIS SIDE UP", "KEEP FROM FREEZING OR OVERHEATING", "DO NOT CHANGE WATER", etc.

(Rule No. 19 concluded on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 8.

ISSUED: MAY 15, 1974	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: JUNE 20, 1974

142

(Printed in U.S.A.)

CORRECTION NO. 2154

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	21st Revised Page 16 (Issued in lieu of 20th Revised Page 16 rejected by C.A.B. and C.T.C.(A)) Cancels 19th Revised Page 16

RULES AND REGULATIONS

RULE NO. 19 - PACKING AND MARKING REQUIREMENTS - (Concluded)

(F) On a shipment of two or more articles having a declared value of more than $500,000.00, the carrier shall have the right to require that such articles shall be separately packaged.

(G) Any article susceptible to damage by ordinary handling must be adequately protected by proper packing and must be marked or bear appropriate labels.

(H) Any article susceptible to damage as a result of any condition which is encountered in air transportation, such as high or low temperatures, high or low atmospheric pressures, or sudden changes in either, must be adequately protected by proper packing and any other necessary measures.

(I) Manuscripts; Paintings, Oil; Pastels; Pictures and/or Watercolors:

(1) Manuscripts; Paintings, Oil; Pastels; Pictures and/or Watercolors with glass or cast acrylic sheet facings (other than American standard commercial quality transparent weatherable cast acrylic plastic sheet of adequate thickness to resist breakage over the span covered) WILL NOT BE ACCEPTED.

(2) Shipments of Commodities named in sub-paragraph (1), having a declared value of more than $50.00 must be packed in WOODEN BOXES, marked "MANUSCRIPTS; PAINTINGS, OIL; PASTELS; PICTURES AND/OR WATERCOLORS".

(3) Shipments of Commodities named in sub-paragraph (1), the value of which does not exceed $50.00 per package framed or mounted, will be accepted when packed in wooden boxes or in outside double-faced corrugated cartons not less than 270 pounds Mullen Test; the inside wrapping to be such that the contents will be held in suspension of not less than one (1) inch from all sides and ends of outer container, and plainly marked on outside container "MANUSCRIPTS; PAINTINGS, OIL; PASTELS; PICTURES AND/OR WATERCOLORS".

(4) Shipments of Commodities named in sub-paragraph (1) must have all finished surfaces protected with non-abrasive material in addition to necessary inner protective packing.

(J) DOGS:

(1) Shipments of dogs will only be accepted when tendered in crates or kennels, which comply with the following provisions.

(2) The shipper must furnish the crate or kennel. Kennels or crates must be of sufficient size to permit the dog(s) to stand up and turn around and provide sufficient light and ventilation.

(3) Kennels or crates must be of sound and secure construction to prevent the escape of the dog(s). The slats must not be more than two (2) inches apart and shall be securely fastened to the bottom of the crate or kennel, so as to prevent the dog(s) paws or legs from protruding from the container, absorbent material must be placed in the bottom of the crate or kennel in sufficient quantity to protect against leakage.

(4) Intentionally left blank.

(K) The shipper must furnish a street address and/or a telephone number for all shipments of live Animals and Birds. Shipments carrying post office box numbers are not acceptable unless a local telephone number is shown.

▲(L) INTENTIONALLY LEFT BLANK

RULE NO. 20 - MIXED SHIPMENTS OF DIFFERENTLY RATED PROPERTY

(A) Shipments consisting of property, part of which is subject to charges at rates published in Section 5 or 17 and part to charges at rates published in Section 10 or 11 shall be treated as separate shipments of each class of property for the purpose of determining the applicable charges.

(B) Shipments consisting of property, part of which is subject to charges at rates published in Section 5, and part to charges at rates published in Section 9 shall be treated as separate shipments of each class of property for the purpose of determining the applicable charges, but the combined charges shall NOT exceed the charge on the entire shipment at rates published in Section 5.

NO CHANGE ON THIS PAGE.

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	12th Revised Page 19 (Issued in lieu of 11th Revised Page 19 rejected by C.A.B. and C.T.C.(A)) Cancels 10th Revised Page 19

RULES AND REGULATIONS

RULE NO. 25 - ARMED GUARD-PROTECTIVE SECURITY SERVICE - (Concluded)

(E) Any shipment containing any of the following articles or commodities on which the declared value of shipment is $5,000.00 (U.S. Currency), $5,150.00 (Canadian Currency) or more, and provided that the declared value per pound determined under Rule No. 8 of this tariff is $50.00 (U.S. Currency), $51.50 (Canadian Currency) or more per pound, will only be accepted for transportation when the carrier provides Armed Guard-Protective Security Service under provisions and charges in this Rule:

Art Works
Bills of Exchange
Bonds
Bullion or Precious Metals
Currency
Deeds
Dore Bullion
Evidences of Debt
Firearms, all types
Fur-trimmed Clothing
Furs
Gems, cut or uncut
Gold Bullion, Coined, Uncoined, Cyanides, Dust or Sulphides
Jewelry
Money
Narcotics and Narcotic Drugs
Pearls
Platinum
Promissory Notes
Securities, Negotiable
Silver Bullion, Coined, Uncoined, Concentrates, Cyanides, Precipitates or Sulphides
Stamps, Postage or Revenue
Stock Certificates
Watches

(F) Any shipment containing Cremated Remains will only be accepted for transportation when the carrier provides Armed Guard-Protective Security Service under provisions and charges in this Rule.

RULE NO. 26 - INTENTIONALLY LEFT BLANK

RULE NO. 27 - RECEIVING AND PREPARING YOUR SHIPMENT

(A)(1) At points in the UNITED STATES, the shipper shall prepare and present a uniform non-negotiable Air Express Receipt (bill of lading) with each shipment tendered for transportation in Air Express Service, as set forth in Rule No. 20.

(2) At points in CANADA a non-negotiable Air Express Money Receipt, or Air Express Goods Receipt will be presented with each shipment tendered for transportation in Air Express Service, as set forth in Rule 23.

(B)(1) On shipments FROM points in the UNITED STATES the value of the goods or property shall be declared by the shipper and inserted in the receipt. The shipper's declaration of value may be made by inserting "Not exceeding $50.00" or "Not exceeding 50 cents per pound" in the blank space on the receipt after the words "Declared Value".

(2) When the declared value exceeds carrier's maximum liability as specified above, the value shall be marked by the shipper upon the shipment.

(C)(1) On shipments FROM points in CANADA, shippers should be requested to declare the value, which value, when given, must be inserted in the receipt, marked on the package and entered on the waybill.

(2) When the shipment consists of two or more packages or pieces, the declared value shall be marked on each package or piece as follows:

"Value $. . . . . .on (Number of packages or pieces)".

(D) Shipments consigned to a point at which the carrier has no service shall be marked with forwarding directions or the name of the Express Company office at which delivery will be accepted.

(E) Shipments of jewelry, diamonds or other precious stones, money, bullion, bonds, coupons, watches or valuable papers must be declared and described in the air express receipt. In case of loss of or damage to any such articles, not declared and described in the Air Express Receipt, the carrier will not assume any liability therefor.

(F) The carrier does not, by accepting a shipment bearing special instructions, which affect the handling or delivery of the shipment or which call for service not otherwise provided, assume any responsibility for compliance with such instructions, or any liability for failure to comply with such instructions.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

ISSUED: MAY 15, 1974	Issued by: G. T. MIANO, Agent 210 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: JUNE 20, 1974

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CORRECTION NO. 2156

NO CHANGE ON THIS PAGE.

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	12th Revised Page 20 Cancels 11th Revised Page 20

RULES AND REGULATIONS

RULE NO. 28 - TERMS AND CONDITIONS OF TRANSPORTATION

(A) At points in the UNITED STATES, the shipper shall prepare and present a Uniform non-negotiable Air Express Receipt (bill of lading) with each shipment tendered for transportation in Air Express Service, and such transportation shall be subject to the following terms and conditions, in addition to those elsewhere set forth in this tariff.

Terms and Conditions (applicable to the Uniform Air Express Receipt)

(1) The provisions of this tariff shall inure to the benefit of and be binding upon the consignor, the consignee, and all carriers handling the shipment, and shall apply to any reconsignment, or return thereof.

(2) In consideration of the rate charged for carrying said property, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the carrier shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds, unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the carrier shall in no event exceed such value.

(3) Unless caused by its own negligence or that of its agents, the carrier shall not be liable for:

(a) Difference in weight or quantity caused by shrinkage, leakage or evaporation.

(b) The death, injury, or escape of live freight.

(c) Loss of money, bullion, bonds, coupons, jewelry, precious stones, valuable papers, or other matter of extraordinary value, unless such articles are enumerated in the receipt.

(4) Unless caused in whole or in part by its own negligence or that of its agents, the carrier shall not be liable for loss, damage, or delay caused by -

(a) The act or default of the shipper or owner.

(b) The nature of the property, or defect or inherent vice therein.

(c) Improper or insufficient packing, securing or addressing.

(d) The act of God, public enemies, authority of law, quarantine, riots, strikes, the hazards or dangers incident to a state of war, or occurrences in customs warehouses.

(e) The examination by, or partial delivery to, the consignee of C.O.D. shipments.

(f) Delivery under instructions of consignor or consignee at points where there is no agent of the carrier after such shipments have been left at such points.

(5) Packages containing fragile articles or articles consisting wholly or in part of glass must be so marked and be packed so as to insure safe transportation by express with ordinary care.

(6) When consigned to a place at which the carrier has no service, shipments must be marked with the name of the Express Company office at which delivery will be accepted or be marked with forwarding directions.

(7) As conditions precedent to recovery claims must be made in writing to the carrier within nine months after delivery of the property or, in case of failure to make delivery then within nine months and fifteen days after date of shipment, and suits shall be instituted only within two years and one day after the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof.

(8) If any C.O.D. is not paid within thirty days after notice of non-delivery has been mailed to the shipper the carrier may at its option return the property to the consignor.

(9) Free delivery will not be made at points where the carrier maintains no delivery service. At points where delivery service is maintained free delivery will not be made at addresses beyond the established and published delivery limits.

(Rule No. 28 continued on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

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CORRECTION NO. 2157

▲J. F. MAHON, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	2nd Revised Page 21 Cancels 1st Revised Page 21

RULES AND REGULATIONS

RULE NO. 28 - TERMS AND CONDITIONS OF TRANSPORTATION - (Continued)

Terms and conditions (applicable to the Uniform Air Express Receipt)-(Concluded)

Special Additional Provisions as to Shipments Forwarded by Air or Vessel from the United States to Places in Foreign Countries.

(10) If the destination specified in this receipt is in a foreign country, the property covered hereby shall, as to transit over Air or ocean routes and by their foreign connections to such destination, be subject to all the terms and conditions of the receipts or bills of lading of Air or ocean carriers as accepted by the carrier for the shipment, and of foreign carriers participating in the transportation, and as to such transit is accepted for transportation and delivery subject to the acts, ladings, laws, regulations, and customs of oversea and foreign carriers, custodians, and governments, their employees and agents.

(11) The carrier shall not be liable for any loss, damage, or delay to said shipments over Air or ocean routes and their foreign connections, the destination of which is in a foreign country, occurring outside the boundaries of the United States, which may be occasioned by and such acts, ladings, laws, regulations, or customs. Claims for loss, damage or delay must be made in writing to the carrier within nine months after delivery of the property at said port or in case of failure to make such delivery then within nine months and fifteen days after day of shipment; and claims so made against said delivering or issuing carrier shall be deemed to have been made against any carrier which may be liable hereunder. Suits shall be instituted only within two years and one day after the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof. Where claims are not so made, and/or suits are not instituted thereon in accordance with the foregoing provisions, the carrier shall not be liable.

(12) It is hereby agreed that the property destined to such foreign countries, and assessable with foreign governmental or customs duties, taxes, or charges, may be stopped in transit at foreign ports, frontiers or depositories, and there held pending examination, assessments, and payments, and such duties and charges, when advanced by the carrier shall become a lien on the property.

(B) At points in Canada, an Air Express Goods Receipt or an Air Express Money Receipt shall be issued for all property received for transportation in air express service and,such transportation shall be subject to the following terms and conditions,in addition to those elsewhere set forth in this tariff:

▲Terms and conditions (applicable to the Air Express Goods Receipt).

(1)(a) In this contract "Carrier" means the Carrier issuing this Air Express Shipping contract, as well as any other Carrier subject to the Aeronautics Act, the Railway Act or the Transport Act, to whom the shipment may be delivered to complete the transportation of the shipment from origin to destination; and "Connecting Carrier" means any Carrier not subject to the Aeronautics Act, the Railway Act or the Transport Act to whom the shipment may be delivered to complete the transportation of the shipment from origin to destination.

(b) This contract shall inure to the benefit of or be binding upon the shipper and consignee and all persons claiming or asserting any right to the ownership or possession of the shipment, and shall inure to the benefit of and be binding upon any Carrier to whom the shipment may be delivered for furtherance to destination and shall apply to any reconsignment or return of the shipment.

(c) The rights and obligations of any Connecting Carrier with respect to the shipment, whether the Connecting Carrier issues a Bill of Lading or a receipt only, shall be those which would be in a Bill of Lading issued by the Connecting Carrier, to the same extent as if the shipment had been delivered directly by the shipper to such Connecting Carrier.

(2)(a) When in accordance with the terms of this contract the Carrier is liable for any damage (which damage shall mean herein any complete or partial loss or destruction, injury or delay) with respect to any shipment, whether such damage arises through negligence or otherwise, the amount for which the Carrier shall be liable in accordance with Clauses 2 (b), 2 (c) hereof shall not exceed, in any event, the actual value of the shipment which actual value shall mean the value of the shipment at the time and place of receipt hereof by the Carrier, including transportation and other charges if paid and the duty as payable or paid and not refundable.

(b) The maximum liability of the Carrier with respect to the shipment shall be limited for any shipment of one hundred pounds or less to fifty dollars ($50.00) and for any shipment in excess of one hundred pounds to an amount not exceeding fifty cents (50¢) per pound (actual weight) unless the shipper indicates in the Air Express Shipping contract his intention to take advantage of the provisions of Clause (c) hereof.

(c) The maximum liability of the Carrier shall be the amount of the value declared by the shipper and embodied in the Air Express Shipping contract and provided that valuation charges are assessed in accordance with the applicable tariffs.

(3)(a) Money, specie, negotiable papers, jewelry, precious or semi-precious metal or stones, gold or silver coins or bullion and similar goods, antiques, or other related or unrelated old,rare or precious articles of extraordinary value shall not be packed or included with shipments of merchandise and if so packed,the Carrier shall not be liable for damage to or loss of such goods.

(b) The liability of the Carrier for a shipment of money, specie, negotiable papers, jewelry, precious or semi-precious metal or stones, gold or silver coins or bullion, and similar goods, antiques, or other related or unrelated old, rare or precious articles of extraordinary value, will not be for a greater sum than that stated in the Air Express Shipping contract or for more than the actual value of the shipment at the time and place of receipt thereof by the Carrier, whichever may be the lesser amount, including the transportation and other charges if paid and the duty as payable or paid and not refundable; nor, in the event of partial loss or damage, for a greater proportion of the sum declared, or of such lesser actual value, as the case may be, than that which the portion lost or damaged bears to the whole shipment.

(Rule No. 28 continued on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

▲J. F. MAHON, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	2nd Revised Page 22 Cancels 1st Revised Page 22

RULES AND REGULATIONS

RULE NO. 28 - TERMS AND CONDITIONS OF TRANSPORTATION - (Continued)

▲Terms and conditions (applicable to the Air Express Goods Receipt) - (Continued)

(4) When the shipment is carried at owner's risk in accordance with the terms of this contract or the Air Express Shipping contract is so endorsed and initialled by the Carrier and the shipper, the Carrier shall be liable only for damage to, loss of, or delay which may result from the negligence of the Carrier, and the burden of proving freedom from such negligence shall rest on the Carrier.

(5) The Carrier does not undertake to carry any shipment for the whole or any part of the transit on any particular flight of aircraft, or at or within any particular time.

(6) The Carrier shall not be liable--

(a) For differences in weight or quantity caused by shrinkage, leakage or evaporation;

(b) If a shipment remains undelivered after forty-eight (48) hours or in the case of bonded goods, seventy-two (72) hours, (exclusive of legal holidays) after notice of arrival of the shipment at destination or at point of delivery has been mailed to the address of the consignee, the Carrier may hold the shipment at its premises, subject to storage charges assessed in accordance with applicable tariffs and the Carrier's liability in such event shall be that of a warehouseman only, or at the Carrier's option, such undelivered shipment may be removed to and stored in a public or licensed warehouse at the cost of the owner and there held without any liability on the part of the Carrier and subject to a lien for all lawful charges. This section shall not prejudice any of the rights of the Carrier to otherwise dispose of such shipment;

(c) For any loss, damage or delay caused by the Act of God, the Queen's or public enemies, the authority of law, quarantine, riots, strikes, perils of water and/or air navigation, defect or inherent vice, or the act or default of the shipper or owner of the goods for damages resulting from conditions beyond the control of the Carrier. If the goods move under a tariff providing that the Carrier or Carriers party thereto shall be liable for loss from perils of navigation, then as to such Carrier or Carriers the provisions of this section shall be modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this contract;

(d) For any loss or damage occurring in Customs warehouses, not under control of the Carrier;

(e) For any loss, damage or delay resulting from improper packaging or marking;

(f) For any damage to or loss of any fragile article or to shipments consisting wholly or in part of, or contained in, glass, unless so described upon the package containing the same, unless such damage or loss is due to negligence of the Carrier;

(g) For loss or damage in any way arising out of the examination by, or partial delivery to, the consignee of C.O.D. shipments when such examination or partial delivery is authorized in writing by the shipper;

(h) For any loss, damage or delay to shipments of live objects arising from the conduct or acts of such objects to themselves or to each other or arising from the condition of such objects when received for shipment or from their nature or propensities, all such shipments shall be transported at owner's risk;

(i) For any partial loss, damage or delay unless a notice of such loss, damage or delay is filed in writing with the receiving or delivering Carrier, or Carrier issuing the Air Express Shipping contract or Carrier on whose line partial loss, damage or delay occurred within thirty (30) days after the date of delivery of the shipment, or the date of mailing of notice of arrival, and unless the shipment container of damaged shipment or shipment involving partial loss therefrom is made available for inspection by the Carrier's representative; and unless the claim is filed within twelve (12) months from the date the shipment was delivered by the shipper to the Carrier;

(j) For any loss, damage or delay occurring to shipment addressed to stations where there is no agent of the Carrier after such shipment has been left at such station;

(k) For non-delivery or complete loss or destruction of the shipment in Canada, unless a claim is filed at any office of the Carrier within twelve (12) months from the date the shipment was delivered by the shipper to the Carrier.

(7) (a) At points where the Carrier has delivery service, the Carrier shall tender once the shipment for delivery to the consignee at the address given, if within the delivery limits; if delivery is not effected at that time, the Carrier will mail to the consignee, at said address, a notice of the arrival of the shipment.

(b) At points where the Carrier has no delivery service, the Carrier shall mail to the consignee, at the address given, a notice of arrival of this shipment.

(c) The Carrier's liability to deliver to addresses outside delivery limits shall be governed by applicable tariffs.

(d) If no Carrier has a place of business at the destination point to which the shipment is addressed, then, unless otherwise routed, the Carrier only agrees to carry the same to its office or that of some other Carrier most convenient for furtherance to destination and upon arrival at such office the Carrier may so notify the consignee or upon the direction of the shipper or consignee will, or at its own discretion may, as agent for the shipper or consignee, deliver the shipment to any Connecting Carrier for furtherance to destination and the Carrier's liability shall thereupon cease.

(8) If the shipment is tendered bearing special instructions of the shipper to the Carrier effecting the handling or delivery of the shipment or calling for service not provided elsewhere in the tariffs of the Carrier, the Carrier will not be liable for any loss, damage or delay resulting from or attributable to compliance, in whole or in part, with such instructions, or for failure to comply with all or part of such instructions.

(Rule No. 28 concluded on next page)

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

NO CHANGE ON THIS PAGE. C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 1	23rd Revised Page 23 Cancels 22nd Revised Page 23

RULES AND REGULATIONS

RULE No. 28 - TERMS AND CONDITIONS OF TRANSPORTATION - (Concluded)

Terms and conditions (applicable to the Air Express Goods Receipt) - (Concluded)

(9) Federal, Provincial and Municipal Governments issue regulations constraining the movement of certain commodities. The Carrier will not be responsible for the consequences to the shipper or consignee or any person claiming or asserting any right to the ownership or possession of the shipment resulting from contravention by the shipper or consignee of any such regulations.

(10) The shipper or consignee shall pay the transportation and all other lawful charges accruing on the shipment and, if required, shall pay same before delivery.

(11) The Carrier may return the shipment to the shipper and collect all lawful charges, including those for transportation both ways and for storage if the shipment remains undelivered for thirty (30) days after written notification has been sent to the shipper.

(12) Any alteration, addition or erasure in the Air Express Shipping contract shall be signed or initialled by an agent of the Carrier issuing the same and the shipper and,if not so signed or initialled,shall be without effect and the Air Express Shipping contract shall be enforceable according to its original tenor.

(C) Terms and conditions (applicable to the Air Express Money Receipt).

(1) The words "the carrier" shall include any connecting carrier subject to the Aeronautics Act, the Transport Act, 1938, or the Railway Act, 1919, which participates in the carriage of the goods.

(2) The provisions of this tariff shall extend to and be binding upon the shipper and all persons in privity with him, claiming or asserting any right to the ownership or possession of the shipment, and shall inure to the benefit of the carrier and of any other person or company to whom the shipment may be delivered for the performance of any act or duty in respect thereof, or in whose custody or charge the same may lawfully be, or on whose vehicle, vessels or aircraft the same is being carried under or pursuant to this tariff, and shall apply to any reconsignment or return thereof.

(3) The carrier shall not be liable:-

(a) For loss or damage occurring after twenty-four hours (exclusive of legal holidays) after notice of the arrival of the shipment at destination has been mailed to the address of the consignee, unless such loss or damage is caused by the negligence of the carrier.

(b) For any loss, damage or delay caused by the act of God, the Queen's or public enemies, the authority of the law, quarantine, riots, strikes, perils of water and/or air navigation, defect or inherent vice, or the act of default of the shipper or owner.

(c) For any loss or damage occurring in customs warehouse.

(d) For any loss, damage or delay resulting from improper or insufficient packing, securing or addressing.

(e) For a greater sum than that stated or declared on the face of this agreement or for more than the actual value of the shipment at the time of the receipt thereof by the carrier, whichever may be the lesser, including the carriage and other charges, if paid, and the duty, if payable or paid and not refunded, nor, in the event of partial loss or damage, for a greater proportion of the sum so stated or declared or of such lesser, actual value, as the case may be, than that which the portion lost or damaged bears to the whole shipment.

(f) For loss or damage from delays beyond its control, or caused by the neglect or refusal of any railway, steamboat, truck, air or other transportation line whatsoever, to receive and/or carry forward the shipment.

(g) For any damage, loss or shortage, unless written notice thereof is given at an office of the carrier within two months from delivery or from the time delivery should, in the ordinary course of transit, have been made.

(4) If no carrier subject to the Aeronautics Act, the Transport Act, 1938, or the Railway Act, 1919, has an office at the place to which the shipment is addressed, then, unless otherwise expressly provided, the carrier agrees only to carry the same to its office most convenient for furtherance to destination, and upon arrival there, the carrier shall notify the consignee thereof, or, upon direction of the shipper or consignee, will, or within its own discretion may, deliver the shipment to any connecting carrier not subject to either of the said acts for furtherance to destination and thereupon its undertaking as carrier shall be conclusively deemed to be performed.

(5) The carrier reserves the right, to call upon the consignee to take delivery of the shipment at its office at destination.

(6) Duty and customs house expenses are guaranteed by the shipper.

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5..

ISSUED: June 20, 1974	Issued by: G. T. MIANO, Agent 219 East 42nd Street, New York, N.Y. 10017	EFFECTIVE: July 31, 1974

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CORRECTION NO. 2198

C.T.C.(A) No. 1 C.A.B. No. 1

G. T. MIANO, AGENT OFFICIAL AIR EXPRESS TARIFF No. 1	SECTION 2	23rd Revised Page 24 Cancels 22nd Revised Page 24

ALPHABETICAL INDEX BY STATES, POSSESSIONS AND PROVINCES THENCE BY POINTS AT WHICH AIR EXPRESS SERVICE IS AVAILABLE, WITH IDENTIFYING RATE ZONE NUMBERS

To determine Rate Scale Numbers between Rate Zones, refer to Sections 4 and 6. The column entitled "Within Terminal Area Of" indicates the point from or to which service by aircraft is provided (See Rule No. 15). See Section 3 for Code Index.

List of Points Served	Rate Zone No.	Within Terminal Area Of
ALABAMA		
Bates Field	412	MOB
Birmingham	364	BHM
Birmingham V.A. Hospital	364	BHM
Boyliston	385	MGM
Chase	342	HSV
Chickasaw	412	MOB
Chisholm	385	MGM
Crienton	412	MOB
Decatur	342	HSV
Fairfield	364	BHM
Fairhope	412	MOB
George C.Marshall Space Flight Center (NASA)	342	HSV
Gunter AFB (Gunter Field)	385	MGM
Homewood	364	BHM
Huntsville	342	HSV
Irondale	364	BHM
Kilby	385	MGM
Leeds(Jefferson Co.)	364	BHM
Madison	342	HSV
Maxwell AFB (Maxwell Field)	385	MGM
Midfield	364	BHM
Mobile	412	MOB
Montgomery	385	MGM
Montgomery Holding & Reconsignment Depot (Army)	385	MGM
Montgomery U.S.P.& P.O. (Alabama National Guard)	385	MGM
Montgomery V.A. Hospital	385	MGM
Montgomery V.A. Regional Office	385	MGM
Moulton	342	HSV
Mountain Brook	364	BHM
Phenix City	386	CSG
Prichard	412	MOB
Redstone Arsenal	342	HSV
Tarrant City (Tarrant)	364	BHM
Toulminville	412	MOB
Vestavia Hills	364	BHM
ALASKA		
Anchorage	443	ANC
¶Cordova	445	CDV
Elmendorf AFB	443	ANC
Fairbanks	446	FAI
Fort Richardson	443	ANC
Fort Wainwright	446	FAI
¶Juneau	448	JNU
¶Ketchikan	450	KTN
¶Kotzebue	452	OTZ
¶Nome	455	OME
Sitka	448	SIT
Spenard	443	ANC
¶Unalaxlect	457	UNK
¶Yakutat	458	YAK
ARIZONA		
Avondale	351	PHX
Cashion	351	PHX
Davis Dam	373	TUS
Flagstaff	306	FLG
¶Glen Canyon Dam	284	PGA
Glendale	351	PHX
Goodyear (Litchfield)	351	PHX
¶Grand Canyon	284	GCN
Kingman	305	IGM
Litchfield (Goodyear)	351	PHX
Litchfield Park	351	PHX
Luke AFB	351	PHX
Maryvale	351	PHX
Mesa	351	PHX
¶Page	284	PGA
Peoria	351	PHX
Phoenix	351	PHX
Phoenix V.A.Hospital	351	PHX
Phoenix V.A. Regional Office	351	PHX
Scottsdale	351	PHX
South Tucson	373	TUS
Sun City	351	PHX
Tempe	351	PHX
Tolleson	351	PHX
Tucson	373	TUS
Tucson V.A. Hospital	373	TUS

(Section 2 continued on next page)

§CANCELLATION NOTICE

Anniston,Anniston Ordnance Depot (Bynum),Attalla,Dothan,Eastaboga,Florence,Fort McClellan,Gadsden, Holt,Jacksonville,Muscle Shoals,Northport,Oxford,Rainbow City,Sheffield Tuscaloosa,Tuscaloosa V.A. Hospital and Tuscumbia,ALABAMA,formerly published on 22nd Revised Page 24 and omitted herein are cancelled. Air Service Discontinued.

† - See Rule No. 14, Paragraph (B).

For explanation of abbreviations and reference marks used but unexplained hereon, see Page 5.

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CORRECTION NO. 2109